

No. 13658

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United States  
Court of Appeals  
For the Ninth Circuit.

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MILTON H. OLENDER,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

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Transcript of Record  
In Three Volumes  
Volume II  
(Pages 497 to 936)

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Appeal from the United States District Court for the  
Northern District of California,  
Southern Division.

MAY 14 1953

PAUL R. O'BRIEN



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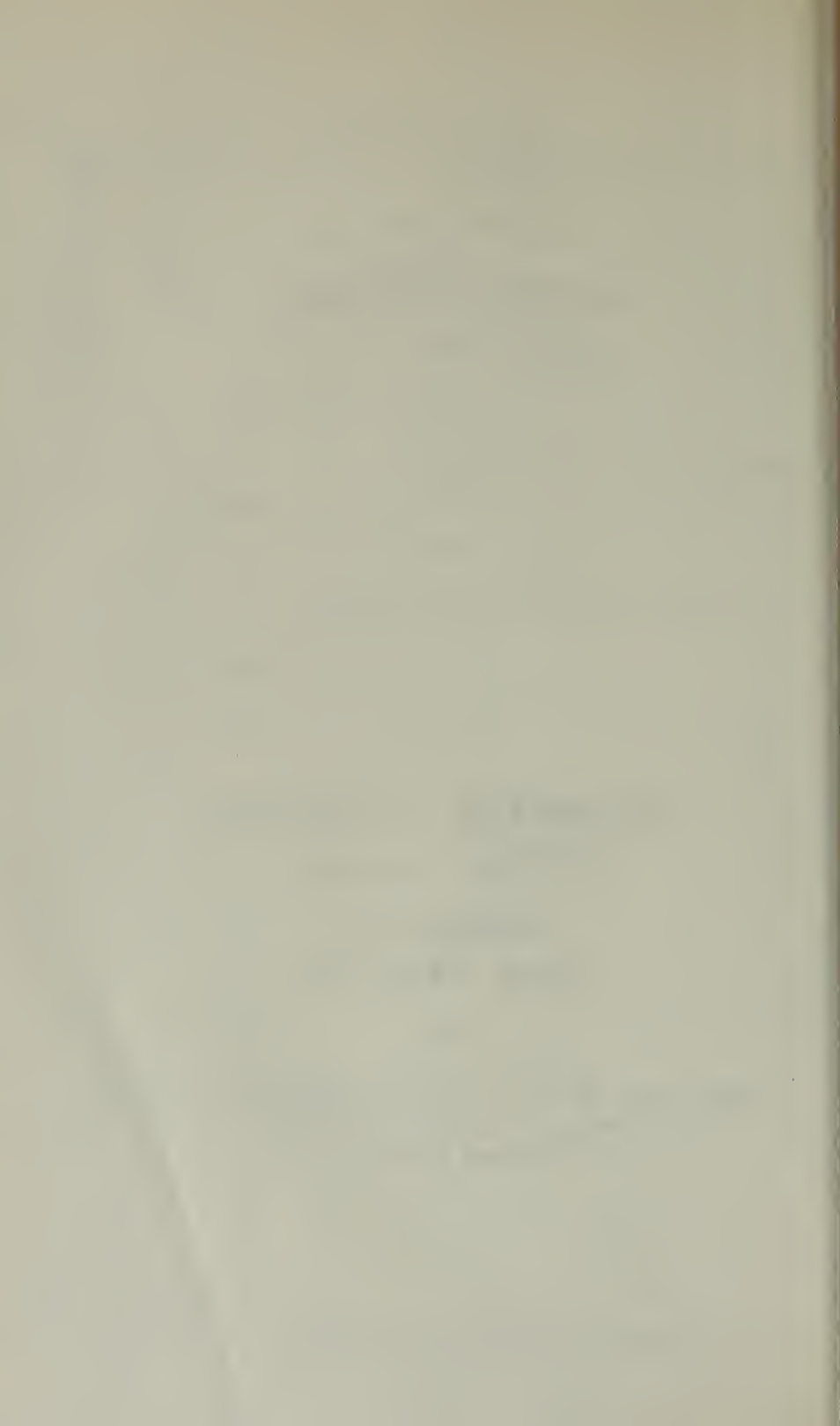
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(Testimony of Milton H. Olender.)

Redirect Examination

By Mr. Hagerty:

Q. Mr. Olender, in connection with the last two questions of Mr. Drewes', you took accounting at the University of California, how many years ago was that? A. It will be 35 pretty soon.

Q. How big a class were you?

A. 1918 class.

Q. How big a class? How many pupils in the class that you studied accounting in, do you recall?

A. Twenty-five or thirty.

Q. What other subjects did you study at that time?

A. Well, accounting was a very minor subject. I took general economics course, money and banking, commerce, and [495] social history of England, railroading, statistics, oh, several others. I was taking a course to prepare me to go into my father's business.

Q. I notice there is a course indicated here, "First year P.E." What is that?

A. Physical Education.

Q. And another one "Geography," is that right?

A. Yes, geography.

Q. "Economics 4," "Economics 3-A," what were they, do you know? A. I don't remember.

Q. Another course, "German." Can you speak German? A. Yes, very fluently.

Q. Could you speak it before you went to school?

A. Yes, in my home. In fact, I majored in German more than economics.

(Testimony of Milton H. Olender.)

Q. Were the accounting courses that you took in your courses at college considered electives to your major?

A. They were requirements of a college of commerce. You had to take them.

Q. Awhile ago Mr. Drewes questioned you in reference to your inventory sheet.

A. Yes, sir.

Q. Were these inventory sheets made in the regular course of your business? For the purposes of the record, defendant's [496] Exhibit N for identification.

A. They were made in the regular course.

Q. They were made in the regular course of your business?      A. Yes.

Q. Made at your immediate direction, were they?

A. They were made solely by me.

Mr. Hagerty: At this time, your Honor, I would like to offer in evidence the inventory sheets of the defendant, which is defendant's Exhibit N for identification.

The Court: Is there any objection?

Mr. Drewes: No objection.

The Court: These are in the handwriting of one person, are they?

A. They are in my handwriting.

The Court: They are in your handwriting?

A. Yes.

The Court: In association with the inventory schedules which counsel has offered to be introduced in evidence, did you maintain or cause to be maintained a stock ledger account?

(Testimony of Milton H. Olender.)

A. No, sir. Just one inventory a year. I took one at the end of each year.

The Court: With reference to the years in question and under inquiry did you at any time maintain a stock ledger account? [497]

A. What do you mean by stock ledger account?

Q. Well, what is your appraisal of a stock ledger account? A. I don't know what it is.

Q. Did you ever hear of a stock ledger account?

A. No, sir.

Q. How many different types of merchandise did you handle? A. Several thousand.

Q. How did you know from time to time the amount and the identity of any particular commodity as contained in your place of business?

A. I kept very close touch on every item.

Q. How?

A. I knew what was selling and I knew what was getting low.

Q. How? A. I could tell.

Q. How?

A. If someone came in and I was out of something I knew it.

Q. How?

A. Because I couldn't sell it to them. If a man wanted an item and I was out of it, I immediately replenished it, and I did have this additional help, my main business, as has been stated before, was with service men, and there were several definite items which were demanded constantly and I [498] never permitted those items to run low, items that I carried as many as five and ten gross of, and the

(Testimony of Milton H. Olender.)

moment we got down to one or two gross I immediately had those clerks come to me. I could not let them run down because they were very profitable items and constantly saleable.

Q. Well, you had clerical help, did you not?

A. Yes, I did.

Q. Bookkeeper?

A. A very short part-time bookkeeper.

Q. And other than that you maintained the books yourself?      A. No, I did not at any time.

Q. Who maintained the books?

A. Miss—Mrs. Vera Manger. I might add, your Honor, I had two bookkeepers, Mrs. Manger left my employ during 1945 and Mrs. Virginia Busby came in.

The Court: Let us take the earlier years when you would be entrained in the business, do you recall at any time a stock ledger account in connection with the business?

A. No, sir, never had one.

Q. You never maintained a stock ledger?

A. No, sir. I had a one man business. I had all I could do to run it myself. I had no employees whatsoever until 1941.

Q. And the question I addressed to you yesterday with respect to the 20 sailor suits, are the records available [499] either in Court or elsewhere wherein a determination could be made as to the sales of those sailor suits?

A. The only thing that I would have, your Honor, I have my deposit books, the daily deposit book. When I make a deposit to the bank I record

(Testimony of Milton H. Olender.)

all checks and currency and so on, and the sales are there but there would be no way——

The Court: Haven't you an invoice register?

A. No.

Q. Did you ever maintain an invoice register?

A. What do you mean by invoice register?

Q. Incoming items or outgoing items?

A. Yes, there is one here.

Q. Did you keep an account of the sailor suits?

A. Not separately, not—. I only kept the accounts of the people from whom I bought the merchandise. Not the items. In other words, I am buying from a house now, Wolfe, Brown & Company. I buy sailor hats, military equipment, sailor uniforms. I don't differentiate.

Q. Was this inventory that you now propose to have introduced in evidence made by actual count?

A. Yes.

Q. And the inventory in question has no relationship or bearing to any of the books of account?

A. No. I just went downstairs first. I have two basements. And I took the basements separately. Then I came upstairs and [500] took them and recorded them in my inventory. And the total inventory shown there is the inventory which is reflected in my return.

The Court: Well, let us take the invoices coming from Goodman & Company or Saraga or any of the other persons to whom reference has been made.

Did you keep those invoices in any place in your business? A. Yes, I did.



(Testimony of Milton H. Olender.)

Q. And as you paid the invoice I assume you made an entry in your book? A. Yes.

Q. Let us take the Goodman transaction. You paid the Goodman transaction. How would you enter it in your books? A. Which one?

Q. Take the Goodman transaction involving \$20,000.

A. It was never entered, the original transaction. Only the later items which came in and were put in the books.

Q. The only other item you had of the Goodman transaction was in connection with the 322 sailor suits, is that right?

A. And the deposits of the sale Mr. Leavy had made and Mr.—and the one to Mr. Lerman.

Q. Is there anything in these books here that points to an inventory account at all?

A. Just at the end of the year there is a [501] merchandise record which would show the inventory, the amount of inventory.

The Court: May I see that, please?

A. (Handing to Court.)

The Court: Let us take the inventories here. May I have them, Mr. Clerk?

(Inaudible remarks of witness.)

The Clerk: Speak up, Mr. Witness.

The Witness: I am sorry. I thought I was talking to the Judge.

The Court: What does J. G. 22 mean?

A. General journal page 22. This is the profit and loss statement.

(Testimony of Milton H. Olender.)

Q. Is this in your handwriting?

A. No, sir.

Q. You have an item of \$85,001.26. You credited inventory and you debited profit and loss, is that right?

A. I assume so. I don't know.

Q. You mean to say that you do not know what Dr. and Cr. means?

A. Oh, yes. I didn't know which account you meant. I don't know why it's profit and loss. I don't understand that.

The Court: I have no further questions. These may be admitted in evidence.

The Clerk: Defendant's Exhibit N heretofore marked for [502] identification now in evidence.

(Thereupon group of inventory sheets previously marked Defendant's Exhibit N for identification were received in evidence.)

Q. (By Mr. Hagerty): Directing your attention——

The Court: Oh, by the way, for insurance purposes how did you carry your insurance in connection with your stock and inventory stock?

A. Based on my inventory.

Q. Based on inventory? A. Yes.

Q. How often would you advise the insurance company of the inventory status?

A. Well, I had only one insurance man and he kept in constant touch with me and if I had bigger purchases or my inventory seemed to be up some time during the middle of the year I would increase it.

(Testimony of Milton H. Olender.)

The Court: Well, your appraisal as to inventory, would that be reflected in your books of account as to current inventory, would that be reflected in your books of account?

A. No, not the current.

Q. Do I understand your testimony that at no place in your books of account could anyone find a current inventory?

A. Not a current one. Only the one at the first of the [503] year.

The Court: All right. That may be marked in evidence.

Q. (By Mr. Hagerty): Mr. Olender, did you know George Goodman?

A. I never met the man in my life until 1947 when he came out here.

Q. Did you ever know Mr. Saraga?

A. I never saw Mr. Saraga till last week.

Q. That was here in this trial? A. Yes.

Q. Had you ever done business with either of those gentlemen prior to, say the first of 1944?

A. No.

Q. How did you first start to do business with them? A. Through Mr. Leavy.

Q. Will you find in the defendant's Exhibit N that reference to the 322 sailor suits at the end of the Goodman transaction when you put them into inventory? A. The end of '46?

Mr. Hagerty: What is the page number?

Mr. Lewis: Page 45, January 1, 1946.

A. Yes, I found it.

Q. (By Mr. Hagerty): At the top of that sheet,



(Testimony of Milton H. Olender.)

page 45 of the 1946 inventory, is there any memorandum as to the location in your store of that [504] material?      A. There is a notation "B-1."

Q. What does that mean?

A. Basement No. 1.

Q. When you received the Goodman uniforms, which didn't suit your business, they were over-size or unmerchandisable, where did you place them?

A. In basement No. 1.

Q. And they remained there all the time?

A. They did.

Q. Until you took them into this inventory?

A. That's correct. They were in there during this inventory.

Q. Was that fact always predominant in your mind in reference to these suits?

A. I knew they were always in the basement, because there was no use bringing them upstairs. Just but a handful of them.

Q. In your inventories do you show the source of any of the individual items?

A. I do not.

Q. In reference to these 322 suits on sheet 45 of the 1946 inventory are there some pencilled memoranda on that sheet?      A. There are.

Q. And what does that indicate to you?

A. It indicates at the end of that all of the merchandise [505] which is in basement No. 2.

Q. But I mean with particular reference to the suits, was there——

A. It indicates of the 322 suits which were all

(Testimony of Milton H. Olender.)

Goodman suits in my basement, 75 of them were upstairs and the remainder were downstairs, but I wanted to get a correct count on those Goodman suits.

Q. Yesterday Mr. Drewes questioned you with reference to the preparation of income tax returns for other people, among them relatives of yours that operate the Simmons Glove concern, is that it?

A. Yes.

Q. In the preparation of those returns did you make any audit of their books?

A. I did not. I never saw their books.

Q. How did you prepare the return?

A. Mrs. Simmons and her assistant kept the books, and it is a very simple matter to make up an income tax return from a business if you have certain definite items. You just have an inventory at the beginning and an inventory at the end, your purchases and your sales, and then your expenses, and I told her to make out a sheet for me and if she would give me those figures I would show her how to make out the return and help her with it. And that's what I did for her.

Q. In other words, she prepared the figures, brought them [506] to you—

A. That's right.

Q. —and you assembled them on the income tax form?           A. That's right.

Q. She paid you something for that, too, did she not?

A. Against my will she paid me \$25.

(Testimony of Milton H. Olender.)

Q. And what did you do with the funds?

A. I cashed the check, and she is a very active social worker, and I told her that I was going to give that to her, I didn't want it, and to turn it over, and it was either turned over to the Haddasah, Youth Allyah, or some other Jewish charity in which she was working at the time. I don't know which one, and they got the money for it.

Q. You yourself kept no part of the funds?

A. No part at all.

Q. Mr. Olender, directing your attention to an affidavit that Mr. Drewes questioned you about yesterday, which apparently is an affidavit of your own. Will you relate the circumstances to His Honor and the ladies and gentlemen of the Jury as to how that affidavit was prepared?

A. How or why, Mr. Hagerty?

Q. Both.

A. Well, it was prepared for a specific purpose. My sister, as has been stated in Court here, was the attorney for the estate, and she knew as a [507] fact——

Q. That is, the estate of your father?

A. The estate of my father. And she knew as a fact——

Mr. Drewes: We object what the sister knew as a fact. It is no part of this record. It is hearsay as to this witness.

Mr. Hagerty: I will withdraw that.

Q. What is your birth date?

A. December 6, 1895.

(Testimony of Milton H. Olender.)

Q. Is there a recital in that affidavit as to your date of birth?      A. There is.

Q. Will you read it?

A. (Reading):

“Milton Howard Olender, being duly sworn, deposes and says, that he was born on December 5, 1895.”

Q. And you were born on December 6th, is that right?      A. Correct.

Q. Did you read that affidavit when you signed it?      A. I did not.

Q. Who prepared it, who prepared the affidavit, who drew it up?

A. My sister who was the attorney for my father's estate.

Q. How did you happen to sign it?

A. Well, I had a good deal of faith in my sister. I knew [508] what she was trying to accomplish and I knew that the facts that she was stating in there as to the purpose of the affidavit were correct, because she had told me what she was going to try to prove.

Q. Mr. Olender, I show you a couple of letters apparently, which are written in lead pencil. Do you recognize them?      A. I do.

Q. What are they?

A. Letters from my mother.

The Court: We might take the noon adjournment at this time, ladies and gentlemen. The same admonition to you, not to discuss the case under

(Testimony of Milton H. Olender.)

any condition or circumstances, not to form an opinion until the matter is submitted to you.

And we will resume at 2:15.

Mr. Drewes: If your Honor please, may I make a statement at this time for the record, may I ask counsel for the defendant and his accountant to search the records of the defendant for the purpose of finding what invoices appear in those records of Mr. Goodman with particular reference to any dated June 8 or June 14, 1944.

Mr. Hagerty: We will be glad to do it, your Honor, if we can find them.

Mr. Drewes: Thank you.

(Thereupon an adjournment was taken until 2:15 o'clock p.m.) [509]

September 24, 1952, 2:00 P. M.

MILTON H. OLENDER

the defendant herein, having been previously duly sworn, resumed and testified further as follows:

Redirect Examination

(Resumed)

By Mr. Hagerty:

Q. Mr. Olender, you testified here that in reference to the Asturias Import Export Corporation that you had first given them \$5000 as an investment, or whatever it was, that you then gave them another \$5,000 at a later date as a loan, is that true? A. That is correct.



(Testimony of Milton H. Olender.)

Mr. Drewes: Objected to, your Honor, as improper redirect. I didn't cover the matter on cross-examination.

The Court: Overruled.

A. That's correct.

Q. (By Mr. Hagerty): Subsequently, maybe a year or so later, was it, you received stock in that corporation? A. I received the stock in 1948.

Q. 1948. At this time I show you a promissory note and ask you if you can identify it.

A. That is a note signed by the vice-president of the company.

Q. Of which company?

A. The Asturias Export and Import [510] Company.

Q. And how did that originate, that note?

A. That is a note in which they gave me for a \$5,000 which I had loaned them.

Mr. Hagerty: At this time, your Honor, please, I would like to offer this note in evidence as the defendant's next in order.

Mr. Drewes: May I see it, counsel?

Mr. Hagerty: Didn't I show it to you?

Mr. Drewes: No.

The Court: Is there any objection?

Mr. Drewes: I haven't seen it, your Honor.

Mr. Hagerty: I'm sorry. I laid it on his desk and I thought I showed it to him.

The Court: It would facilitate matters if you exchanged these exhibits.

Mr. Hagerty: Yes. I laid it on his desk before

(Testimony of Milton H. Olender.)

Court started together with this invoice that he requested.

Mr. Drewes: No objection.

The Court: It may be marked into evidence.

The Clerk: Defendant's Exhibit R in evidence.

(Thereupon promissory note in the amount of \$5,000 was received in evidence and marked Defendant's Exhibit R.)

Mr. Hagerty: At this time, if I may, your Honor, I would like to read the note to the jury and show it to them.

The Court: Certainly. [511]

Mr. Hagerty: Defendant's Exhibit R reads as follows: It is in the form of a promissory note. Herein he gives \$5000, dated December 12, 1946.

"Within ninety days after date we promise to pay to the order of Milton Olender \$5000 at 112 Market Street, San Francisco, California, value received with interest at . . . . per cent per annum."

This is No. 5. There is a blank space, and the maker of the note, the Asturias Import Export Corporation, by Benjamin H. Neiden, general manager, and it is signed in ink Benjamin H. Neiden, vice-president.

Mr. Hagerty: At this time may I pass it to the jury?

(Exhibit R passed to the Jury.)

Q. (By Mr. Hagerty): Mr. Olender, at the time of the execution of this promissory note, which is defendant's Exhibit R in evidence, was that in-

(Testimony of Milton H. Olender.)

tended to be for the purchase of securities in this corporation?      A. It was not.

Q. Subsequently did you receive securities from that corporation?

A. Yes, subsequently, in 1948.

Q. Can you explain to the ladies and gentlemen of the jury and His Honor why you got the securities instead of the money back on this note?

A. Well, all the money that we had loaned them was gone. [512] They had nothing to show for it, so they decided to give us securities for it instead of nothing.

Q. At this time, Mr. Olender, I show you an invoice and ask you if you can recognize it?

A. Yes, sir.

Q. What is it?

A. It is an invoice from George Goodman Sales Agency dated September 12, 1944.

Q. What does that represent or cover?

A. 60 serge sailor suits for \$23 a suit, \$1380.

Mr. Hagerty: At this time, if your Honor please, I would like to offer this invoice as the defendant's exhibit next in order.

Mr. Drewes: No objection.

The Court: It may be marked in evidence.

The Clerk: Defendant's Exhibit S in evidence.

(Thereupon invoice in the amount of \$1380 was received in evidence and marked Defendant's Exhibit S.)

Q. (By Mr. Hagerty): Mr. Olender, on Exhibit



(Testimony of Milton H. Olender.)

S, defendant's Exhibit S, the price of 18 ounce serge sailor suits—the cost price is shown as \$23, is that true?

A. Yes, sir.

Q. On this large order that you placed with Mr. Goodman the cost price was \$25, you testified?

A. That's correct. [513]

Q. Can you explain the difference?

A. Yes. The actual cost of the suits, as far as they were concerned, is \$23, but there was a \$2 commission. One dollar went to Mr. Leavy, one dollar went to Mr. Goodman, and the price to me for the suits was \$25. I didn't know how they divided it up but I learned that later that each one got a dollar for each suit.

Q. Now with reference to the lot of suits, 322 suits that you had on your inventory, indicated as being in basement 1, did you keep any other sailor uniforms in that basement?

A. I kept none but the Goodman suits.

Q. Then is it your testimony that at all times you kept the Goodman purchases, that is original purchases, the purchase of sailor suits which was unmerchandisable from your standpoint, you kept it segregated in your store?

A. They were in the basement, basement No. 1, separate, segregated.

Q. With the exception of the 75 you indicated you had upstairs?

A. There were a few suits I had upstairs. I brought the smaller sizes. I call them "smaller," they were 38's which you could sell occasionally.

(Testimony of Milton H. Olender.)

Q. Now following this year of 1944 or during the period '44, '45 and '46, did you attempt to make any large purchases of uniforms other than from Mr. Goodman? [514]           A. Yes, I did.

Q. Can you tell the ladies and gentlemen of the Jury where and when you tried to make such purchases?

A. The exact dates I don't remember. But there was a check issued on the Army and Navy Store in 1945 for \$55,000 to one Joseph—S-a-b-e—in New York and that deal did not materialize. My check was returned to me and redeposited.

Q. Is that transaction reflected in your records?

A. It is in the books of the Army Navy Store for the year 1945. Also just prior to this Saraga Seagoing deal, which shows on my books as, I believe, \$27,000 plus, I issued a check to the Seagoing Uniform Company of New York for \$27,000, and a short time thereafter, due to the inability of the Seagoing to deliver it, they returned that check to me, and it likewise was entered into the books of the Army and Navy Store, and they are on my records there.

Q. Why were you attempting to make such large purchases of sailor uniforms?

A. Well, they were very difficult to get, especially in the sizes that you wanted, and in these two particular instances these people thought they could deliver those, and when they found they couldn't, I wouldn't accept anything else, and it was a strict

(Testimony of Milton H. Olender.)

injunction if they were not small sizes I don't want them.

Q. Directing your attention to approximately the year 1939-40, [515] what would you say your gross sales were at your location over there?

Mr. Drewes: Objected to as immaterial, irrelevant, your Honor.

Mr. Hagerty: The idea is, your Honor, to show the development, how it expanded and how it was difficult to get merchandise.

Mr. Drewes: I don't see the materiality.

Mr. Hagerty: Also to show that he was handling the whole thing himself, he was undermanned, and just to show the general duties he was doing to show why in some instances he can't remember dates, just to show the volume of work he was doing.

The Court: You may answer.

A. My sales to 1940 at no year were \$10,000. It did not reach that figure. My income tax returns will show that.

Q. (By Mr. Hagerty): Now, approximately what would your sales volume be for the years '44, '45 and '46?

A. Better than \$200,000 a year.

The Court: Are those figures heretofore the subject of any stipulation on total sales?

Mr. Hagerty: I don't think so.

Mr. Drewes: Just on assets, your Honor. Not on volume of business.

The Court: All right. [516]

Q. (By Mr. Hagerty): Now, were you han-

(Testimony of Milton H. Olender.)

dling your own purchases?           A. Yes.

Q. Were you working in the store?

A. Yes, sir.

Q. Were you handling whatever credit transactions you had to make?

A. Well, if I may be permitted, your Honor, to give in detail my duties.

The Court: All right.

A. I was the sole owner and proprietor. As I have stated earlier, I only had two or three employees. My volume was up to better than \$200,000. One year I know it was \$225,000. I had to do all of the purchasing, I had to do all of the receiving of the merchandise, I had to do all of the marking, and, as you know, we were under OPA in those days, with the strict injunction that every piece of merchandise had to be marked with an OPA ceiling price on it, which I abided by.

I had to take care of the cash deposits, and while I had nothing to do with the books, I had to keep the invoices and see that they were in order so that the young lady who did the entering had them, and, I might add, that my store was open seven days a week, every day of the year, with two exceptions, Jewish holidays; that I opened at 8 o'clock in the [517] morning, I closed at ten o'clock at night without any rest, no vacations, except for a couple of brief visits to my son who was in the service; and then at the end of 1945 my health broke completely down.

(Testimony of Milton H. Olender.)

Q. (By Mr. Hagerty): Were you under the care of any physician?

A. I was under the care of S. P. Hirsch in Oakland. He put me to bed.

Q. You have testified here earlier that you prepared and assisted in the preparation of income tax returns for various people?           A. Yes, sir.

Q. Where did you learn to prepare returns?

A. Well, I didn't know too much about them. In all the returns that I ever prepared I was always assisted by an Internal Revenue agent in the service of the United States Government from my earliest days in Fresno right through to the present time.

Q. Can you name some of those men?

A. In Fresno there was Mr. Shea, who has since passed away; Mr. Mitch, who was with the Government for many years and is now a certified public accountant in one of the buildings there; Mr. Hills, Larry Hills, who was a revenue agent, also connected with or is now a certified public accountant; a Mr. Harris, whom I don't know—I don't know what has become [518] of him—. In Oakland, when I came up there, Mr. Vince Guerra, who is still with the Internal Revenue Department, I believe; Mr. Ray O. Waring, who left the Revenue Agent's office and become city treasurer of the city of Oakland; Mr. Manter, who was a very high official in the Internal Revenue Department in San Francisco and later went over to Oakland and had charge of the Oakland office; Mr. Citron, revenue agent in the Oakland office, who I don't know what has become



(Testimony of Milton H. Olender.)

of him. There were several others whose names I don't remember.

Q. Well, did any of those men give you a course in the preparation of income tax returns?

A. No. Oh, no. No, I just took the returns to them and usually there were problems which came up and I wanted to be sure that they were shown directly. I didn't know how to handle them. I knew that the agents did, that they had handled many of those things, and they advised me as to just the method of handling certain things so that there would be no come-back on them because of errors in handling the thing.

Q. On cross-examination Mr. Drewes asked you about some transactions in the reporting of the income of the Riverdale Ranch.

A. That is correct.

Q. Can you tell us about the original purchase of the ranch?

A. The ranch was purchased by my father and uncle a good many [519] years, oh, I would say 1916, I believe, somewhere along in there, and they held that ranch and leased it out for many years, and it is my best recollection there was a pump put in that cost \$4500, there were several houses, a home, a barn, and quite a number of other things which the depreciation had practically vanished long before I got the property. Somewhere along in 1938 or '9—I might add the original cost of that property, I think, was \$30,000. I am not sure.

(Testimony of Milton H. Olender.)

Q. Do you have any records here that would refresh your memory?

A. Yes, I have the income tax returns. I believe you have them—of 1938 and '39.

Q. Mr. Olender, I show you a group of returns and ask you if by examining them you can refresh your memory in reference to the Riverdale transaction?

A. Well, I know the returns but I don't find all of them in here yet. (Examining documents.) Yes, I do recognize them.

Q. What was the original purchase price of the ranch?

Mr. Drewes: Object to that, your Honor, as being irrelevant and immaterial. The cost basis as to this taxpayer of his interest in that property is the valuation at the date of death of his father.

The Court: Is there a question of depreciation that [520] enters into it?

Mr. Hagerty: Yes, there is a question of depreciation.

The Court: I will allow it.

A. The original cost of that property is \$30,000. It was sold in 1938—. The year of purchase, incidentally, I see is 1914. It was sold in 1938 for \$20,000 with a loss on it. The party that purchased that property the following year gave it up, didn't want it.

Mr. Drewes: If your Honor please, may I renew the objection? I think there might be a slight misunderstanding here. The depreciation, of course, is

(Testimony of Milton H. Olender.)

in issue and is pertinent but his depreciation taken by the partnership of which the witness was a member after he acquired the property is. The cost basis of depreciation taken by his father and his uncle is immaterial.

The Court: The Government has raised the issue in connection with the depreciation.

Mr. Drewes: As to after this man acquired the property, yes.

The Court: All right.

Mr. Drewes: He is testifying as to its cost and depreciation taken by his father and his uncle long before he got it.

The Court: Let's start with the events when this man came into possession and acquired title. [521]

Q. (By Mr. Hagerty): When did you acquire title to this property or an interest in it, Mr. Olender?

A. In 1942, at the close of the estate of my father.

Q. In 1942? A. Yes.

Q. Did you take any depreciation in your income tax returns for that partnership on the Riverdale property?

A. I had forgotten that there was a \$72.50 a year depreciation, one-sixth of which would have been about \$12 for me.

Q. You were also questioned by Mr. Drewes in reference to your return on your father's estate wherein one-half the appraised value of the ranch or property was fixed at \$3,000, is that right?



(Testimony of Milton H. Olender.)

A. No, I believe \$9,000. Wasn't it, Mr. Drewes?

Mr. Drewes: The record speaks for itself.

Mr. Hagerty: Where is the record?

Mr. Drewes: \$3,950, as I recall. You will find it in the return. You will find it in Exhibit Number 47.

Mr. Hagerty: If there is a pending question I will withdraw it and direct this one.

Q. Directing your attention, Mr. Olender, to Government Exhibit number 46, schedule A attached thereto, item number 3 on said schedule. There is an appraisal indicated there of \$3,900 odd dollars on the Riverdale Ranch [522] representing an appraisal of one-half interest in that ranch.

A. That is correct.

Q. Can you explain to us why the one-half of the ranch was appraised?

A. The other half belonged to people who were not interested in the estate.

Q. And who were they?

A. My two cousins who had inherited from their father when he died in the early thirties.

Q. In other words, originally this ranch had belonged to both your father and your uncle?

A. Yes.

Q. Did you negotiate with the appraisers, the federal appraisers, or the state appraisers in arriving at that figure? A. I believe I did.

Q. And for such work was that the reason you got the fees that were shown? A. Yes.

Q. In setting up the value of this property for

(Testimony of Milton H. Olender.)

income tax purposes what basis do—did you use on this sale of setting up your values?

A. May I explain this, your Honor?

The Court: Certainly. [523]

A. Well, as I stated earlier, the property had been sold in 38——

Mr. Drewes: Objected to as immaterial, irrelevant, your Honor.

The Court: Well, it may be the basis of an explanation. I do not know at the present time.

A. It is, your Honor.

The Court: As to your compilation of evaluation?

A. Yes.

The Court: And so forth. If it is, you may answer.

A. It was sold in 38, as I stated, for \$30,000, and a loss was taken, although a five or six thousand dollar deposit had been paid on it. [524] The next year the party who bought it quit claimed it, deeded the property back to my parents. They walked off it. And I have in the 1939 return this notation along with all of the facts concerning the sale of the ranch, many figures——

Mr. Drewes: The witness is testifying from a document which is not in evidence, your Honor.

Mr. Hagerty: Well, he hasn't testified as to the details, he just said——

Mr. Drewes: He said this is the 1939 return. As I understood he was about to read from it, as I understood the witness.

Mr. Hagerty: I don't think so.

(Testimony of Milton H. Olender.)

The Court: You may continue.

A. The note at the bottom of the page was: "Note: The figures and method of handling the above ranch deal was suggested by the special agent at Fresno, California."

I had taken this up with him in detail as to how to arrive at a new cost basis on this property which had originally cost \$30,000, had been sold for \$20,000, and now there was additional cash which made the value higher and the ultimate value in there became a figure somewhere above \$23,000 as the value of the property as of that time.

Mr. Drewes: Your Honor, it is quite apparent to me [525] that we are on a collateral issue now as to details of complicated transactions apparently occurring in 1938, long before this witness acquired his interest in the property. I again renew my objection. It is incompetent, irrelevant and immaterial and request that it be stricken from the record.

The Court: What is the relevancy, counsel?

Mr. Hagerty: He will connect it up with the sale and the loss shown on the sale which is in question here on the partnership return of '46. I think it is 1946.

Mr. Drewes: I don't see how that can be done. The cost basis is shown in the estate tax return of his father. Now, if that is in some way—if he wants to go into that, of course, that is the point from which we start.

The Court: Precisely what is the position of the Government on this Riverdale property?

(Testimony of Milton H. Olender.)

Mr. Drewes: Precisely, the position is this, that this man, this witness enjoyed a substantial capital gain which he did not report and it is evidence submitted on the issue of intent to the very years in question.

The Court: If that be so, if the Government contends that this man enjoyed a substantial capital gain and if that offer is made on the theory of intent to defraud, I think you should allow the latitude of circumstances surrounding the transaction so that there may be a [526] comprehensive knowledge on the part of the Court and the jury as to the underlying facts.

Mr. Drewes: Precisely, your Honor. But the factors which I conceive as being relevant to that inquiry is the relationship between what was received by this defendant when he sold the property as related to the cost basis when he acquired it, which was upon the death of his father.

The Court: That is perfectly true, the acquisition cost as compared with the ultimate disposition cost.

Mr. Drewes: And I fail to see—

The Court: And the price of disposition would be reflected—would reflect the capital gain.

Mr. Drewes: He now testified—

Mr. Lewis: Your Honor, I stipulate to the capital gain but this man has a right to testify why he used one basis instead of another. Every taxpayer is not acquainted with 113 of the Internal Revenue Code.

(Testimony of Milton H. Olender.)

Mr. Shelton: If your Honor please——

Mr. Lewis: This—pardon me——

Mr. Shelton: Back in 1938 Mr. Olender didn't even have an interest in this property. The partnership didn't own it and I think it can be developed that he was preparing that return as the agent of others in that year. It is going back before a period when he had any interest in it. It is [527] strictly collateral.

The Court: I think the witness should be permitted to testify concerning the surrounding circumstances, that is to say the circumstances surrounding his acquisition. The question is interwoven with price and consideration or cost of acquisition on his part, whether it be a bookkeeping figure, whether it be the result of some arithmetical computation, and in addition to that I am interested, and I know the jury will be interested, in what price, if any, he received for it ultimately, in the ultimate sale thereof. But I don't think we should go back to facts which are entirely unrelated to matters which may have affected the prior owners or prior title holders.

Mr. Drewes: I agree with your Honor entirely. The principles are clear.

The Court: Then to that extent where are we now in point of time? He relates—the witness refers to 1938, am I correct?           A. 38 and 39.

Mr. Drewes: There was——

The Court: And you read from——

A. The 1939 return, your Honor.



(Testimony of Milton H. Olender.)

The Court: That was not your return?

A. No, that was the return of the partnership which I prepared. [528]

The Court: How did you set up the basic cost when you acquired this property?

A. From this return.

The Court: From this return?

A. Yes, sir.

The Court: Tell me, how did you do that?

A. The property, as I stated, reverted back to my parents and they had received—they made a loss on the property. The selling price was \$20,000 but the additional money——

The Court: Wait a minute—just a moment. The property had reverted to your parents?

A. Again.

The Court: Again. All right.

A. Now, the amount of money which they had received from the party who bought it would then be added to the cost. I should say, should be deducted from the original cost. In other words, the original cost was \$30,000. They had received five or six thousand dollars. That would have reduced the cost. Plus other expenses it came to \$23,000 as the new cost, which was set up by Mr. Mitch of the Internal Revenue.

The Court: What was your starting point on the cost?

A. 1914. [529]

The Court: No. What is the starting point here as when you set it up?

A. In my books?

The Court: Yes.

(Testimony of Milton H. Olender.)

A. 19—well, it wasn't set up in my books. I showed it in the partnership return when it was sold and I used the basis which had been set up by Mr. Mitch in 19—

The Court: What was your cost as to sale? How do you show that total cost?

A. The property—

The Court: The total cost of the property?

A. \$30,000.

The Court: What did you show as to the sale price?

A. \$20,000.

The Court: You showed a loss then?

A. Yes.

The Court: A loss of \$10,000?

A. That's right.

The Court: All right. I understand.

A. Then we received, I believe, five or six thousand dollars, something of that sort, for payment. And naturally when the property came back that amount you had received already, and it reduced the cost of the property to the owners and [530] brought the property down to \$23,000. And while I had forgotten, and I assure you not intentionally, the brief small items of depreciation—I just assumed the \$20,000—had been taken off a few dollars a year—the 20,000 of the cost and the 20,000 of the selling price would balance the thing, and instead of showing a bigger loss than I would have shown had I taken the \$23,000 figure, we practically broke even. I believe there is a loss of \$84 divided up among six people.

(Testimony of Milton H. Olender.)

Q. (By Mr. Hagerty): Mr. Olender, directing your attention now to the time at which you made up the partnership return of 1946 showing the sale of this ranch and indicating a loss thereon. What basis did you use for the original cost price and what basis in determining the loss or the results of the transaction?

A. Well, I took that \$23,000 figure and reduced it to \$20,000. I didn't figure out the depreciation. I just put it down there because had I shown the \$23,000 it would have shown a much bigger loss and I didn't think that was proper.

Q. Well, on the return which is in evidence you show on the schedule, schedule D attached thereto, which is Exhibit P in evidence, you show the cost of this ranch as \$20,000.

A. That is correct. [531]

Q. The gross sale price is \$20,000?

A. Yes, sir.

Q. And the cost of sale is \$84.22, which are the escrow charges and the title insurance charges, is that true?      A. Yes, that is true.

Q. And so you set that up as a loss on the transaction, is that right?      A. Yes.

Q. At that time did you believe that was a legal and proper way to account for that?

A. Yes, I did. I thought it was proper. There was no substantial profit, as Mr. Drewes has stated. Even if his figure had been used it would have been a very small sum.

Q. Actually this ranch if you had used that



(Testimony of Milton H. Olender.)

basis—using that basis, the ranch actually cost \$23,000, not \$20,000, isn't that correct?

A. That is right.

Mr. Hagerty: Would your Honor like to take the afternoon recess?

The Court: You might go a while longer.

Mr. Drewes: I didn't hear that colloquy between Court and counsel.

The Court: Counsel asked if I would like to take the recess now. We might go a little longer.

Q. (By Mr. Hagerty): Now, you have testified that during [532] the period of time from approximately 1930 to 1939 your father made gifts to you of approximately \$5,000 each year in cash and placed it in the vault in the Olender building in Fresno? A. Yes.

Q. Was that gift for you alone?

A. No, it wasn't. It was for me and my wife.

Q. You testified that you placed that money in 1942 in the safety deposit box in Oakland belonging to you and your wife? A. That's correct.

The Court: Pardon me, counsel, when you say "you placed the money in your safe deposit box in Oakland"—

A. Yes.

The Court: It is your testimony you transferred that from the vault—

A. From Fresno to Oakland.

The Court: —in Fresno to Oakland.

A. Into a joint box with me and my wife on the box.

(Testimony of Milton H. Olender.)

The Court: How much money did you transfer?

A. \$75,000.

The Court: What is the date?

A. In '42—'42 or '43——

Mr. Hagerty: Would it be the date that the box was opened as recorded at the bank or had you—— [533]

A. Well, originally in '42 and then transferred to the other box in '43. The first box was not brought in here.

Q. Do you recall the approximate bulk of that currency, how did you handle it from Fresno?

A. I drove up here.

Q. What did you put the currency in?

A. In a safe deposit box.

Q. How did you carry it, in your automobile?

A. Yes. Oh, I had it in a suitcase, I presume.

Q. What denomination of bills did you have?

A. Oh, there were mostly large bills, hundred dollars, five hundred dollars, thousand.

Q. And what size—I mean what dimension, what size? A. Well, they were the new type bills.

Q. By that you mean what?

A. Well, there was a change in currency. I don't know what year. Some year. These were not the old type bills. These were the small bills that are now in use. The bills used to be—the wallet makers used to have to use more material to carry your money in.

The Court: Thousand dollar, five hundred bills and smaller denominations?

(Testimony of Milton H. Olender.)

A. Yes.

Q. (By Mr. Hagerty): I show you two letters, Mr. Olender, written in pencil and ask you if you recognize them? [534]

A. They are letters from my mother to me.

Q. Did you have a correspondence with your mother in reference to the purchase of some investments for her? A. Yes, I did.

Q. And as a result of that correspondence did you make any arrangements with the Bank of America?

A. I don't quite understand your question, Mr. Hagerty.

Q. Well, you had a safety deposit box in the Bank of America, is that true? A. Oh, yes.

Q. That was in the name of your wife and yourself? A. That's right.

Q. Did you make as a result of this correspondence with your mother any other arrangements with the Bank of America?

A. Yes. Mother and I opened a joint box.

Q. Did you following this correspondence make certain investments for your mother?

A. Yes, I did.

Q. What did you do?

A. I purchased some bonds for her.

Q. What type of bonds were they?

A. They were bearer bonds, Treasury bearer bonds.

Q. And where did you place them?

A. In our joint safe deposit box. [535]

(Testimony of Milton H. Olender.)

Q. Did your mother ever enter that box to your knowledge?

A. I'm not sure if she did or not. I don't know. She probably did, but I wouldn't say that she did.

Q. In your mother's correspondence with you did she ever give you instructions or advice as to the management of the Fresno properties?

Mr. Drewes: Objected to, your Honor, as calling for hearsay testimony.

A. I wish she were here to tell it.

The Court: Do you wish a short recess? We might take a short recess so you may prepare your notes.

Mr. Drewes: Might I address you very briefly, your Honor?

The Court: Yes.

Ladies and gentlemen, the same admonition to you, without repeating the terms thereof, not to discuss the case, not to form an opinion. You may now take a recess.

(The following proceedings heard outside the presence of the jury.)

Mr. Drewes: I wish to proceed with the utmost caution at this stage of the proceeding. I noted in response to a question asked of this witness by his attorney in relating the various things that he did in the operation of the stores he stated that he was always very careful to see that the prices of the goods—— [536]

The Court: I anticipate the question.

(Testimony of Milton H. Olender.)

Mr. Drewes: ——to conform to the OPA regulations.

The Court: I anticipate your question. He said he always abided by OPA regulations.

Mr. Drewes: Yes. I wonder then by having opened up the subject it is not proper for the Government to interrogate him with respect to the matter which we offered to introduce at the time the character witness testified. I would ask for a preliminary ruling in the mater rather than to——

The Court: I appreciate your discussing this out of the presence of the jury. I think it is good deportment in the trial of the case. Both counsels acquitted themselves very well in this trial. I think I will allow the question on cross-examination of the witness. The witness brought it out and I think it is proper cross-examination at this stage of the case.

Mr. Drewes: Very well, your Honor.

The Court: And counsel on redirect may explain it and such matters as may be relevant. But I think now the question is entirely open for discussion.

Mr. Drewes: Would you get the file, Mr. Clerk, during the recess?

The Court: This question of the Riverdale property—may I address both counsel on the matter of the Riverdale [537] property. I think it is a little bit confusing as it now sits in the record, as it is now situated.

Mr. Drewes: The Government's position is quite clear as the record stands.



(Testimony of Milton H. Olender.)

The Court: I appreciate your position.

Mr. Drewes: We contend it is a capital gain of over \$2,000 which was not reported, and simply related by the evaluation in the father's estate plus the return.

The Court: Have you a breakdown on these figures?

Mr. Drewes: I believe they are in the record, your Honor. His one-sixth interest of the property at the evaluation shown in his father's tax return.

The Court: The thought I had in mind—I tried to situate myself in the trial of this case as the ordinary juror. And now these cases are not easy for jurors, and I know that going through the minds of probably the majority of them there will be a query: What is a capital gain? Well, a capital gain, half of them never heard of a capital gain. And I say, in deference to both sides, as you go along, explain the terms as you go along. I allow latitude in these cases. I like to try them with both trials open, so to speak. I like to have both sides heard. With respect to the reception of evidence, I am rather broad in my view. I think both sides should have an opportunity of being heard, within the realms of relevancy [538] and materiality. But as you go along explain as best you can what you mean by capital gains, what his concept of the capital gain is, what the witness' concept is, I may be incorrect but I feel rather that the jurors are a little bit confused. I may have confused them by inquiring, I don't know. I try not

(Testimony of Milton H. Olender.)

to intrude myself, and if at any time I do by questioning, it is not, and I will charge the jury hereafter, not a reflection upon a given witness, be it the defendant or anyone else. It is rather in a desire to elicit facts, as illustrative in connection with the inventory. In none of those questions was it intended by me to embarrass the witness on the stand, and I will instruct the jury at the proper time.

It struck me as a commentary and somewhat as an anomaly that in this type of business he would not have some stock record, however meager it may be, however meager it may be. I may be incorrect. It may be that in his type of business you just take a wholesale look at things and break it down at the end of the year and take a gross inventory at that time. But I say that deferentially to the defendant. It seems to me also that invoices might well be kept and probably should be of the sales and the purchases, at least a ticket of some kind, a sales ticket of the sale.

Mr. Hagerty: One thing I did not bring out, from the [539] defendant yet, his records at the present time——

The Court: For instance, I asked about the sale of 20 sailor suits. Those 322 suits found their way into the inventory out of the blue from an accounting viewpoint. They just fly into the inventory unadorned. The explanatory note in the breakdown which was submitted to the Court demonstrates that there was a differential of some \$8,000 odd dollars —\$8,033. I haven't the figures before me but my

(Testimony of Milton H. Olender.)

recollection is around \$8,000. Now, they just couldn't fly into that inventory. There must be some rationalization on that. I don't know whether your accountant will rationalize it or not. But some place along the line there should be, subject to the examination by the Government, some rationalization.

Now those matters occur to me as I go along, and I think they might well be explained.

Was the introduction into the inventory of 322 suits an afterthought?

Did it find its way in there as the result of matters that may not thus far appear in the record?

I do not know.

How do we account for the difference between the price inventory and the amount otherwise reflected?

Is it a fact, counsel, that there are no invoices or records with respect to the sales at all, the sales invoices [540] at all?

Mr. Lewis: That's right, your Honor. You see——

The Court: For instance——

Mr. Lewis: They just ring up the sale. I think the procedure there was, after all, there were only two or three people selling merchandise in the store, and they would ring up a sale on the cash register. They didn't break it down. A man came in and bought a sailor's suit, bought a cap and shoes. They didn't break it down to those items. If it sold for \$41 in toto that was it.

Mr. Shelton: It is our understanding, if your

(Testimony of Milton H. Olender.)

Honor please, that there was a difference between the ordinary transactions and these sailor suit transactions. That these were started by Olender as a frolic of his own, so to speak, outside of his business procedures. That they were sold through third persons, such as Levy who testified here on this stand, and in that respect, to the sale of the sailor suits the record should be more complete in detail than should there be with respect to three dollar shirts and other things sold for cash over the counter.

The Court: Well, it may be the subject of explanation hereafter. But how under the present mode of operation this man could arrive at a profit and loss I do not know. I can't tell from any accepted accounting practice how he could arrive at any profit or loss. Now, we have as to [541] sailor suit transaction, half of it is in the air, half of it is flying around in the limbo of uncertainty. A piece of it finds its way into the inventory unadorned. The witness, I asked the witness a simple question of a journal entry, and he tells me he doesn't understand the meaning of a journal entry. Now that is incredible, that this man after studying in a university does not know what a journal entry is. I cannot believe that, I will be very frank.

Mr. Olender: Your Honor—

The Court: I don't care to hear from you. I am not reflecting upon the testimony, but the reason I ask the questions is to attempt to clarify in my own

(Testimony of Milton H. Olender.)

mind what apparently is a rather unusual situation. It is extremely unusual.

Mr. Hagerty: We appreciate that, your Honor. I think that it might be explained in that sudden mushrooming of this witness' business. As he testified, in 1939 or 40 I guess——

The Court: To what extent do you disagree with the breakdown here on the board as to liabilities? After all, I assume you will have your own statement on that?

Mr. Lewis: Yes, I have them with me and I have shown them to counsel and I will hand them up to you.

The Court: No. Possibly it wouldn't be the proper time. [542] I want to assimilate it as I go along.

Mr. Lewis: Well, we come out with a totally different figure from the Government. We come out with, assuming that all of the facts that have gone into evidence now are adopted by the jury, we would have an overstatement of income of \$39.08.

The Court: How do you treat the \$10,000 item of Asturias stock?

Mr. Lewis: The Asturias stock your Honor, we treat it—that is covered by the stipulation as to the right way to handle it, the same as these capital gains. We were just showing that leaving it out of Mr. Ringo's statement was not an intentional thing to again himself into a position of filing a false oath with the Government.



(Testimony of Milton H. Olender.)

Mr. Drewes: The Asturias isn't in the stipulation, is it?

Mr. Lewis: I think we included the \$10,000.

Mr. Shelton: That was left out, Mr. Lewis. An examination will show.

The Court: What was the net result according to your theory, counsel, if you are prepared to disclose it, on the matter of the Goodman transactions? Did he suffer a loss or a gain?

Mr. Lewis: No, there was no profit whatsoever, except the normal profit that he would make when he put these suits [543] into inventory, he made his usual profit on them. But as to the suits sold through Levy, those sales were just a wash transaction.

The Court: Well then, you are in sharp conflict.

Mr. Lewis: Very sharp conflict.

The Court: And you proceed I take it, from the stipulated figures, do you?

Mr. Lewis: We started out with—ours is made on this basis; we take the net worth as per the Government's computation, that is, on which they base these figures. Then we take the cash in the box, this \$1,000 check that I'm going to have the accountant explain, the \$20,550 which Goodman had at the time Judge Friedman and the defendant were in the box.

The Court: \$20,000?

Mr. Lewis: \$20,550. Those cashier's checks that went out—or the merchandise was not in inventory at that time but it was on hand in 1944. Then we

(Testimony of Milton H. Olender.)

take the overstatement of the accounts payable like the Smith transaction that we discussed the other day, which amounts to \$6,903.02. Then we deduct the mother's bonds and we come to a net worth increase for 1945 of \$28,161.20. Then we add to that the \$19,081.32 that is stipulated that year, and we reach a total income of \$47,242.52, and then we deduct there, because it was a capital gain and appears in [544] the total one-half for that year, which is in the stipulation, 13977. Then we add the gifts from the mother, the \$575 from Mrs. Widrin, the gifts or the money from Mrs. Foote in 1945, and we reach a figure of \$6,075 of net taxable income, and we come out with a tax on that that is \$39.86 less than taxpayer paid, and we go through the same process in 1946 and we include the \$863.73 of I. Magnin's, and the \$1,391.01 as a non-deductible expenditure——

The Court: There is I take it—I am trying to project my thinking to the end of the trial—this case is going to resolve itself into a conflict between the experts and their interpretation of these figures, is that it?

Mr. Lewis: Yes, and whether—of course, it will eventually resolve itself into whether they believe the defendant's testimony.

The Court: What significance, counsel, do you attach to the matter of \$74,000 into the accounts here.

Mr. Drewes: We have allowed in our stipulation \$50,000——

(Testimony of Milton H. Olender.)

Mr. Shelton: Not in the stipulation but otherwise.

Mr. Drewes: Otherwise. Not in the stipulation.

The Court: You are not concerned with the source of the \$74,000, are you?

Mr. Drewes: We contend that he had fifty of it in 1944. We give him that. That is based on the Government's Exhibit identified by Ringo, where he accounted for disposition [545] of the 75. We say he had fifty of it left at the start of the year.

The Court: That is your start?

Mr. Drewes: Yes, which is based on what we contend is his own statement in the matter essentially. We don't know where it came from.

Mr. Lewis: To show how that figures works out—

The Court: Those are matters of inference to be drawn from the testimony. One person may infer one way and another may infer another way. One person may believe he had the money in the bank and another person may disbelieve. One person may say that the money had been accumulated over a period of years in his business. I don't know. It is a question of his credibility.

Mr. Lewis: That is correct. That is essentially what it comes down to, your Honor. The items on which there is any controversy as to actual transaction, they are very small in this case.

The Court: As I perceive it, there are not too many instances wherein you are at cross-points.

(Testimony of Milton H. Olender.)

Mr. Drewes: That's right.

Mr. Lewis: That's right.

The Court: The Goodman transaction: you brought in this other matter now as to cash.

Mr. Lewis: Yes. [546]

The Court: You have already oriented yourselves as to the \$50,000.

Mr. Shelton: As to Asturias, if your Honor please——

The Court: That is probably open to debate.

Mr. Lewis: We are not contesting, as your Honor——

Mr. Hagerty: We just found that, this note, in running through the files.

The Court: That is open to debate, that \$10,000 item. I think that is open to debate.

Mr. Lewis: Well, we included in the—we are not contesting this as a taxable item. The question—what we were putting in evidence on was to show that an average businessman, when he had something that was worth—in fact to foresee the attack to be made upon the credibility of the witness, because there was \$5,000 of that that he purchased that he did not include in any statement——

The Court: All right. I think I have the issues in mind.

Mr. Shelton: Just one question for clarification, if your Honor please.

The Court: Yes.

Mr. Shelton: Mr. Lewis, you have not included that 10,000 Asturias in here, have you?

(Testimony of Milton H. Olender.)

Mr. Lewis: Yes. As stock or advances. We start with exactly the same figure that you do and show what [547] we disagree with.

Mr. Drewes: If your Honor please, at this time for the record may I ask counsel if they were able to locate George Goodman invoices to Mr. Olender dated June 8th and June 14th?

Mr. Hagerty: No.

Mr. Lewis: No, we have not.

Mr. Hagerty: But I will tell you what we will do, we will make a further search tonight. But the defendant says he doesn't even recognize those.

Mr. Drewes: Well, he so testified.

Mr. Hagerty: Yes.

The Court: We'll take a short recess.

(Recess.)

Redirect Examination

(Continued)

By Mr. Hagerty:

Q. Mr. Olender, yesterday in cross-examination Mr. Drewes asked you whether or not you had made gift tax returns on the gifts that your father had given you?      A. Yes.

Q. Do you know anything about the gift tax laws?      A. I did not.

Q. Now a while ago, Mr. Olender, you were relating your duties in the store and you mentioned that you had to price all your merchandise with the markings according to regulations of the [548] OPA?      A. That is correct.



(Testimony of Milton H. Olender.)

Q. When did you first start doing that, do you know?

A. Well, when the OPA regulations went into effect. I don't remember the date.

Q. Now subsequent to that did you ever have any difficulties with the OPA?

A. No, I did not.

Q. Well, did you ever have any litigation involving the OPA?      A. I did, yes.

Q. I see. How did that—what happened in that, can you explain that to the ladies and gentlemen of the jury?

A. Well, the litigation came over the ceiling price of sailor suits, and there was a general indictment of every merchant in the Bay district, quite a list of names, and people who were selling sailor suits above ceiling prices.

Q. Let me ask you one question. Do you know what the word "indictment" means?

A. No, I don't. I do now, in my case.

Q. Well, did you mean all the merchants in the Bay area were indicted?

A. I don't mean the word indicted. There was a restraining order or something, something happened and the following merchants were cited for having violated. I don't say indicted. Cited perhaps is a better word. [549]

Q. Well, in your own case, what was the outgrowth of this litigation with the OPA, what happened?

A. Well, to the best of my knowledge at that

(Testimony of Milton H. Olender.)

time the OPA, the way it worked, it is slightly different now, the OPA—it is the OPS—but the OPA, you paid so much money for an item and you established a base price, and that was your price. You established that but putting in your chart the ceiling price of your items. There were a great many items that were exempted at that time as there are now in the present OPS. No military items are included. You can sell them at any price, as far as I know. I am not sure, but we have been told that, that military items are not an item of—subject to regulations. At that time also there were different prices in all parts of the country. I learned that later they had set up ceilings on the suits. At New York there was one ceiling price. In Seattle there was another ceiling price. At Los Angeles there was another one. In Oakland there was another one. Wherever you went they had a different price. Well, if you happened to buy your suits in New York, which had maybe a much higher ceiling price, and you got it out here, they said, “Why, you can’t sell them any more than that.” Well, at that time I had been paying \$33 for sailor suits, as the invoices I have will show, and they said the ceiling price was 33.50. Well, I couldn’t stay in business very long selling suits for [550] \$33.50 and making fifty and altering them, and I never charged over \$45 for my suits at that time. Many of these merchants, I learned, were getting 60, 65, 70, all prices. I didn’t do that.

Q. Well, tell me this, Mr. Olender, as the re-

(Testimony of Milton H. Olender.)

sult of this litigation with the OPA did they enter into a—

Mr. Drewes: Objected to as a leading question, your Honor.

The Court: Overruled.

Q. (By Mr. Hagerty): Did they enter into a consent decree with you whereby they agreed that you had no intent to violate the OPA regulation?

A. Yes, they did. They said that any violation I made had been purely unintentional. I might add, Mr. Hagerty, that I never had any other OPA trouble during the entire period of the war nor have I had any OPS trouble during this period.

Q. Now, Mr. Olender, directing your attention to the year—your income tax returns for the years 1944 and 1946, where you and your wife, at the time of filing those returns, did you believe that you had correctly and fully stated all your taxable income?

A. I most certainly did.

Q. Did you at the time of filing those returns or during the course of the years 1945 and 1946 ever intend to evade [551] or violate the income tax laws of the United States?      A. I did not.

Mr. Hagerty: You may cross-examine.

#### Recross-Examination

By Mr. Drewes:

Q. Mr. Olender, I show you the Government's Exhibit number 24, your comparative net worth statements and number 25 for identification, which

(Testimony of Milton H. Olender.)

has been identified as supporting data for 24. I will ask you to look at Exhibit 3, page 1 of Government 25 for identification, Mr. Olender.

A. Yes, sir.

Q. Do you have page 3?

A. Oh, I'm sorry.

Q. Pardon me. Exhibit 3, page 1. You note item 12, Asturias Export Corporation \$5,000?

A. Yes, sir.

Q. And if you will look then on the next page you will see item 12 that reads "Personal check to Asturias Export and Import Company 12/12/46," does it not?

A. Yes, sir, and that is an error.

Q. That, Mr. Olender, is the second of your two investments in Asturias, is that correct?

A. Mr. Ringo made a mistake.

Q. Will you just answer my question, Mr. Olender? A. I don't know. [552]

Q. You made two—— A. That's correct.

Q. ——contributions to Asturias?

A. That's correct.

Q. The first was made in July of 1946?

A. That's correct.

Q. Is that correct? A. That's correct.

Q. The second was made in December of 1946?

A. That's correct.

Q. The item shown here is the second of those two contributions, is it not?

A. It shows the stock——

(Testimony of Milton H. Olender.)

Q. Will you answer my question, please, Mr. Olender?      A. Repeat the question.

Q. The second—the item shown on page 2, Exhibit 3, is the second of those two contributions, is it not?

A. It is an error. It may be, but it is an error.

Q. Is your answer, Mr. Olender, that that is the second of the two contributions?

A. It is the second check issued to Asturias corporation.

Q. All right. And why, Mr. Olender, did you include the second rather than the first contribution?

A. I didn't include it. Mr. Ringo did.

Q. The date which is set forth in Exhibit 3, stocks and bonds, [553] is the supporting data for Government Exhibit number 24, is it not? Will you look at Government Exhibit number 24?

A. Yes, sir.

Q. And as to Exhibit number 24, you swore, did you not, that it was true and accurate and complete?

A. To the best of my knowledge.

Q. Mr. Olender, you have given us the names of an extended—strike that. You have given us the names of a number of agents and employees of the Bureau of Internal Revenue who have aided you and assisted you in the preparation of returns in the years past?      A. Yes, sir.

Q. You mentioned the names of several in Fresno?      A. Yes, sir.

Q. That goes back a number of years?



(Testimony of Milton H. Olender.)

A. That goes back to 19—the early twenties and so on.

Q. Will you state for the record the names of the agents, if any, who helped you prepare your 1945 and 46 returns which are in the record in this action?      A. I don't remember.

Q. I show you, Mr. Olender, the Defendant's Exhibit number N which is the inventory—which are the inventory sheets of the 1st of January, 1945. Calling your attention to page 45 thereof there appears the item "105 sailor suits [554] at \$23 each." State if you will the source of those suits.

A. I don't know.

Q. I show you again the Defendant's Exhibit P, which is the partnership return for the year 1946, and the schedule which is included therewith. The schedule, as you have heretofore testified, shows that the property therein described, the Riverdale ranch, was sold for \$20,000 and that the cost price was \$20,000. That would result in no capital gain, is that correct, Mr. Olender?      A. I believe so.

Q. Mr. Olender, what is a capital gain?

A. It is a profit that you make, I presume, on the sale of property.

Q. On the sale of property. Would you say a profit on a sale of property as distinct from a profit from trading in goods?      A. Oh, yes.

Q. In the regular course of business?

A. Yes.

Q. Or income from earnings or salary or so on?

A. That is correct.

(Testimony of Milton H. Olender.)

Q. A tax is levied on capital gains by the United States Government? A. Yes.

Q. And how is the gain measured for the purpose of arriving at the tax, Mr. Olender? [555]

A. Well, I don't know the exact rules there. You don't pay the entire profit. For instance, if you were to make ten thousand profit on it, there is a certain amount of it which is deducted. It's varied over the years. It was, there was one time where it was 25 or 50 or 75 per cent, different percentages. And then you pay a profit on—or a tax on the ultimate figure, the lowest figure.

Q. And the percentage varies, does it not, depending upon how long you have held the property?

A. Depending upon how long you have held the property, whether you have it under a year or so, over so many years.

Q. However, the profit itself is measured by deducting from the price received the cost of the goods? A. That's right.

Q. Or the cost of the asset to the taxpayer, is that correct? A. That's right.

Q. If the asset is acquired by purchase, how is the base measured?

A. Well, you take the original purchase price.

Q. The purchase price, is that correct?

A. That's correct.

Q. And if the asset is acquired by inheritance, how is the base measured?

A. I know now. I didn't know then. [556]

Q. Well, state how.

(Testimony of Milton H. Olender.)

A. I assume now it is based on the appraisal value at the time of death.

Q. Now, you have stated in connection with your father's estate you did considerable amount of work, I believe, and that work consisted primarily of establishing the evaluations as to the real property which were included in that estate? Now, Mr. Olender, I show you the Government Exhibit number 46 and call your attention particularly to schedule A thereof wherein it is shown that the one-half value of the Riverdale ranch is the sum of \$3,950 and I ask you how that evaluation was arrived at?

A. I believe through the officers of the State Inheritance Tax Appraiser.

Q. And did you assist in the determination of that evaluation?

A. I never from him got his figure.

Q. That is not the question.

May that be stricken as non-responsive, your Honor?

The Court: Yes, that may go out.

A. Yes, I did.

Q. (By Mr. Drewes): Will you describe what you did? A. I merely talked to the man.

Q. And did you turn any information requested of you in connection with that item over to [557] him? A. I don't remember now.

Q. Now, you stated in response to my questions on cross-examination, I believe, that you had a one-sixth interest in that property?

A. That is correct.

(Testimony of Milton H. Olender.)

Q. And that is a one-third interest of the one-half? A. That is correct.

Q. Which is included in your father's estate, is that correct? A. That is correct.

Q. You stated, I believe in response to my earlier question, and as is shown in the partnership return which you have in front of you for 1946, that the property was sold for \$20,000, is that correct? A. That's correct.

Q. And a one-sixth interest in 20,000 is the sum of \$3,333, and some odd cents, is that correct?

A. That's correct.

Q. And on the basis which appears on your father's estate tax return a one-third interest based on the evaluation of \$3,950 is \$1,317 and some odd cents, is that correct? A. Approximately.

Q. Therefore there was a capital gain realized in the amount of \$2,016 and some odd cents, is that correct? A. I believe so. [558]

Q. Mr. Olender, in response to some questions that were asked of you by Mr. Hagerty I understood you to testify that you had attempted to make two large purchases of sailor suits. I think you said in the year of 1945?

A. I am not sure of the year. I believe they are on my books, whatever year they are.

Q. That is what I am leading to. You say they are on your books? A. Yes.

Q. How do you know? You told me you didn't know anything about the books?

A. I looked at them today.

(Testimony of Milton H. Olender.)

Q. As a matter of fact, Mr. Olender, there are many entries in those books which are made in your own hand?

A. I can't find any. There may be. I don't know of them.

Q. Exhibit H for the defendant is in evidence as your general ledger. I am going to show you Exhibit H. Call your attention to page 49. In green ink printed in pen 49, 50, 51, there are many entries thereon. Aren't those in your handwriting, Mr. Olender?

A. No, sir, none of them.

Q. In whose handwriting are they?

A. Miss Vera Manger—or Mrs. Vera Manger.

Q. Will you look at pages 52 and 53? Are any of those entries in your handwriting? [559]

A. No, sir.

Q. The lower right hand side of page 53 there appears to be a number of entries in a different script. In whose handwriting are they?

A. My daughter-in-law, Virginia Busby.

Q. Mr. Olender, you testified in response to questions asked of you by Mr. Hagerty in connection with a civil action brought against you by the Office of Price Administrator during the war.

A. Yes, sir.

Q. And did I understand you to say that in connection with your testimony that the OPA officials had agreed that you had not intended to——

A. I believe the paper—I have never seen that paper. I have only heard the statements in this



(Testimony of Milton H. Olender.)

Court read by the Judge, that the violations were purely unintentional.

Q. Do I understand you to say that the Government agreed with your contentions that the violations were unintentional?

A. They must have. That is what it said.

The Court: I think the record should be indicated.

Mr. Drewes: I was going to amplify by reading the stipulation.

The Court: Yes.

Mr. Drewes: The stipulation in this matter.

The Court: There may be a misconception on the part of [560] the jury with respect to the statement made by the defendant on the stand. I merely read to counsel that part of the stipulation which counsel may now refer to. I never at any time characterized the conduct of the defendant one way or the other. The case did not come before this Court nor did I have any knowledge of the matter until such time as the stipulation and the attendant papers were presented to me.

Mr. Drewes: Yes.

The Court: Does that clarify it?

Mr. Drewes: Yes.

The Witness: Yes.

Mr. Drewes: Possibly at this time I should ask then that the file in civil number 22932 G in the United States District Court for the Northern District of California be made a part of the record in this proceeding.

(Testimony of Milton H. Olender.)

The Court: It may be marked.

The Clerk: U. S. Exhibit number 47 in evidence.

(Thereupon the file in number 22932 G was marked U. S. Exhibit number 47 in evidence.)

Mr. Drewes: I will, if I may, your Honor, read to the jury and summarize the contents of this file as I believe it to be pertinent, and, of course, Mr. Hagerty then would have the right to call attention to the jury to any other parts of it which he wishes to call to their attention. [561]

The action to which I have referred was brought in this Court. It was filed on November 15 in 1943, and is numbered as I indicated a moment ago.

The Court: When you say "in this Court" do you mean in the District Court in and for the Northern District of California, Southern Division, not in this particular court?

Mr. Drewes: No, I should have said there are several departments.

The Court: That's right.

Mr. Drewes: —of this Court, which is the District Court for the Northern District of California. The action is entitled Chester Bowles, Price Administrator, Office of Price Administration, plaintiff, vs. Milton H. Olender, doing business as the Army and Navy Store, defendant.

And the first pleading is called Complaint for Injunction, which is in one count in which the Government alleges the basis for its complaint against Mr. Olender, and it sets forth certain violations,

(Testimony of Milton H. Olender.)

alleged violations of the Price Control Law which were in effect at that time in connection with the sale of Navy uniforms. I believe that is the gist of the complaint.

The charge is set forth in something over two pages here but that is what in legal language and at great length is the substance of the charge. [562]

Then there is in the file also what is called a Stipulation for Judgment for Permanent Injunction. The stipulation is an agreement between the parties, and I am going to read that to you. First, several recitals.

“Whereas, plaintiff above named, on behalf of the United States of America, has filed in the above-entitled Court, a complaint in the above-entitled matter, and

“Whereas, in the complaint the plaintiff has charged that the defendant has engaged in actions and practices which constitute a violation of Section 4 (a) of the Emergency Price Control Act of 1942 (Public Law 421, 77th Congress, 2nd Session, C. 26, 56 Stat. 23), hereinafter called the ‘Act,’ in that defendant violated the General Maximum Price Regulation”——

And then the citations of the specific regulations——

“as amended, effective in accordance with the provisions of the Act, and

“Whereas, the defendant claims that the said violation as set forth in the said complaint was unintentional on his part, and the parties hereto desire

(Testimony of Milton H. Olender.)

to avoid the time and expense of proceeding to trial in said action and the plaintiff and the defendant, and each of them is, willing that in full settlement of any and all violations which may have occurred subsequent to the [563] effective date of the said regulation, and up to, and including the date of filing said complaint, that a decree may be entered in the form annexed hereto enjoining the defendant from all further violations.

“Now, Therefore, in full settlement of any and all such violations during the period of time above mentioned, it is hereby stipulated and agreed that:

“1. Defendant waives any and all defenses that he may have to the claims set forth in the complaint herein, and also waives hearing of the matters set forth in said complaint as well as, waives findings of fact and conclusions of law.

“2. A final judgment in the form annexed hereto on behalf of the United States against the defendant without notice at any time hereafter.”

And then it is signed by two gentlemen, who are designated as attorneys for the plaintiff. It is signed by Milton D. Olender.

The Witness: H.

Mr. Drewes: It looked like a D. Milton H. Olender. And, may I correct myself, it is signed first by two attorneys, two Government attorneys for the plaintiff, and then by Milton Olender, and then by his attorney.

The Witness: Would you state the name of the attorney, please? [564]



(Testimony of Milton H. Olender.)

Mr. Drewes: Pardon me?

The Witness: Would you state the name of my attorney?

Mr. Drewes: Monroe Friedman.

The Witness: Thank you.

Mr. Drewes: And then finally there is a judgment. There are recitals in it—the first which referred to the stipulation which I read to you and then there is the following:

“Now, Therefore, It Is Ordered, Adjudged and Decreed, that:

“1. The defendant, his agents, servants, employees, attorneys, and all persons in active concert or participation with the defendant, are hereby enjoined from directly or indirectly selling, delivering or offering for sale or delivery, any ready-made Navy enlisted men’s uniforms in violation of the General Maximum Price Regulation, as heretofore or as may be hereafter amended, and attempting or agreeing to do anything in violation thereof.”

Then it is signed by the U. S. District Judge and dated the 18th of March, 1944.

The Court: Is this a convenient time, counsel? We may take the recess, unless there be some other matter.

Mr. Drewes: No, it is a convenient time your Honor.

The Court: Ladies and gentlemen, we will take the [565] afternoon recess until tomorrow morning at 10 o’clock. With the same admonition not to dis-



cuss the case nor to form an opinion here until the matter is submitted to you.

(Whereupon an adjournment was taken until Thursday, 25 September, 1952, at 10 o'clock a.m.) [565A]

September 25, 1952, 10:00 A.M.

MILTON H. OLENDER

resumed the stand, and having been previously duly sworn, testified further as follows:

Recross-Examination  
(Continued)

By Mr. Drewes:

Q. Mr. Olender, yesterday in response to a question asked of you by me you stated that the item of \$5,000 Asturias stock dated as of a date in December which appeared in Government Exhibit 25 for identification was an error. Did you tell your then accountant, Mr. Ringo, about both of the \$5,000 transactions?

A. I don't remember if I did or not.

Q. If you did not tell him about both of the transactions how would he pick up that information?

A. Well, he picked up one check. The other check came from an entirely different account, and he did not pick that up until after my net worth statement was turned in and Mr. Root found that check which was the original check for the purchase of the original stock and showed it to Mr. Ringo.

(Testimony of Milton H. Olender.)

Q. You did not tell him about the other——

A. No.

Q. ——\$5,000.

A. I don't remember if I did or not.

Q. Yesterday you testified, Mr. Olender, that in connection with the preparation of 1938 or '39 partnership return for [566] your father and your uncle you calculated the cost basis of the Riverdale property, is that correct?

A. I got that information from the Internal Revenue Department.

Q. You did prepare the 1939 return?

A. Yes, with the help of the Internal Revenue Department.

Mr. Drewes: May the last part of the answer be stricken as not responsive, your Honor?

The Court: Yes, it may go out.

Q. (By Mr. Drewes): In your preparation for that return it is true, is it not, that you acted as accountant for your father and uncle and that you had no interest yourself in that property?

A. I had not interest at that time, no.

Q. And you were acting for the owners of the property? A. Yes.

Q. Is that right?

A. I presume so. Pardon me, just a moment, Mr. Drewes. My uncle was not alive in '38.

Q. Very well. Nevertheless, your answer is that you had no interest in the property at that time?

A. That is correct.

(Testimony of Milton H. Olender.)

Q. And that the work that you did was for the owners?      A. Yes.

Q. Not for yourself? [567]      A. Yes.

Q. Mr. Olender, during the course of Mr. Ringo's employment by you in connection with the preparation of your comparative net worth statement by him, did you at any time tell Mr. Ringo that you had received a sum of money from your mother-in-law, Mrs. Foote, in order to qualify her to receive an old age pension?

A. I never mentioned that to Mr. Ringo, to my knowledge.

Q. That you put that money in your vault?

A. I don't remember ever saying that to Mr. Ringo.

Q. And that after her death, Mrs. Foote's death, you then deposited the money in Mrs. Betty Olender's account?

A. Mr. Ringo did not know there was a Betty Olender account.

Q. You have no recollection?

A. No, no recollection whatsoever.

Q. Of ever making such a statement?

A. No, sir, I have not.

Q. Do you deny that you made such a statement?

A. I do not deny that I made such a statement. I have no recollection of ever having made it.

Mr. Drewes: That is all. No further questions of this witness.

(Testimony of Milton H. Olender.)

Further Redirect Examination

By Mr. Hagerty:

Q. Mr. Olender, in connection with the \$2,500 you testified to that was given to you by Mrs. [568] Foote for a specific purpose. What was that specific purpose?

A. That was money that was to be given to my stepson, Mrs. Foote's grandson, when he purchased a home as a down payment.

Q. And what is his name?

A. Richard Raymond Busby.

Q. I show you a bank book on the Bank of America, Oakland Main Office, and also a deposit slip for the same institution, and ask you if you can identify it?

A. The bank book is Mrs. Betty Olender's savings account in the Oakland Bank of America, 12th and Broadway, No. 35225.

Q. And the deposit slip is what?

A. Is a deposit slip made on May the 12th, 1947, in the Bank of America, 12th and Broadway to Account No. 24495 to Richard Raymond Busby.

Mr. Hagerty: At this time, your Honor, I would like to offer these two exhibits into evidence on behalf of the defendant.

The Court: They may be marked.

The Clerk: Defendant's Exhibits T and U in evidence.

(Testimony of Milton H. Olender.)

(Thereupon the bank book and deposit slip were marked defendant's Exhibits T and U in evidence.)

Q. (By Mr. Hagerty): Now on the bank book for Betty Olender, which is defendant's Exhibit T, is there indicated thereon a withdrawal of \$2,500 from that savings account on May 12th, [569] 1947?

A. There is.

Q. And the deposit slip, which is defendant's Exhibit U, does that indicate a deposit made in the amount of \$2,500 to the account of R. R. Busby on the same date, May 12th, 1947?

A. That deposit slip shows that a transfer was made from the numbered account of Betty Olender—the number is on there—to Richard Busby account the same date. In other words, when we go to the bank and make a transfer, like that, you just get a transfer slip and they don't give you the money; they just take it from one counter to the other, and that was what was done in that case.

Q. Now, Mr. Olender, you have testified to having had certain transactions with the Money Back Smith Company in Oakland wherein you purchased certain things for cash, surplus lots that they had, soft goods, but that in error, through error, those purchases were again set up on your books as accounts payable even though you had already paid for them in cash, is that true?

A. That's true.



(Testimony of Milton H. Olender.)

Q. Did you have similar transactions with a firm by the name of Barney?      A. Yes.

Q. And when were those transactions, do you recall? [570]

A. Oh, the end of the year, in October, November, December.

Q. And the payment was made how?

A. By cashier's check on the Bank of America, 12th and Broadway, at Mr. Barney's request. He has a letter therein which he requested me to pay it by cashier's check.

Q. Now these amounts, these purchases, show up in error in your accounts payable?

A. They did.

Mr. Drewes: I am going to ask that that be stricken, your Honor. I am going to object to it. This witness has testified that his knowledge of his own books is absolutely abysmal. He knows absolutely nothing of what is in his books. Now with respect to the Money Back Smith transaction, I believe counsel stated that eventually it would be shown that is the fact. It has not been shown. There is no testimony that there is any record by way of admissible evidence that Money Back Smith transactions were handled as stated by this witness.

Mr. Hagerty: Well, this is preliminary, your Honor. We discovered it through our accountants Sunday.

Mr. Drewes: It has been preliminary continually up to this moment.

The Court: Let the accountant testify to it. I

(Testimony of Milton H. Olender.)

think if the accountant has the knowledge, he knows, he can testify to it. [571]

Mr. Hagerty: Could I ask him this question?

Q. Have you learned since that there was an error in the accounting procedure involved in these purchases?

Mr. Drewes: That would be hearsay testimony, your Honor. The accountant can testify.

Mr. Hagerty: All right. We will withdraw it then, your Honor.

Q. Mr. Olender, do you have in your possession those cashier's checks?

A. I will have them here this afternoon, the actual checks, and I will produce a photostatic copy of them after they have been shown here.

Q. Mr. Olender, I show you several invoices here and ask you if you recognize them?

A. Yes, sir.

Q. What are they?

A. They are invoices for merchandise received by my firm.

Mr. Hagerty: At this time, if your Honor please, I would like to offer these invoices in evidence as defendant's exhibit next in order.

Mr. Drewes: I will object to them, your Honor, as immaterial, irrelevant, unless the purpose is so stated.

Mr. Hagerty: The purpose will be, your Honor, to show that we can trace through our accountant—this is all preliminary—we will trace through our accountant the system [572] of bookkeeping that

(Testimony of Milton H. Olender.)

was in effect in the defendant's establishment at that period, and during the period in question under the indictment.

Mr. Drewes: I will withdraw the objection, your Honor.

The Court: That is the purpose of this?

Mr. Hagerty: Yes, we have some others, your Honor, that we just want to show that they were a workable set of books and that the accountant will—there is a question as to the defendant's accountancy ability.

Q. I might ask in reference to these books, Mr. Olender, which are defendant's Exhibits J, I, L, K and H, did you set these books up, these exhibits?

A. No, sir, I did not.

Q. Who set them up in your concern?

A. They were set up by Mrs. Vera Manger.

Q. And she was the part-time bookkeeper you employed?

A. She was my part-time bookkeeper, yes.

Q. Now at the time that Mr. Root first came to your establishment—

The Court: The last invoice may be marked in evidence, Mr. Magee.

The Clerk: Defendant's Exhibit V in evidence.

(Thereupon the described invoice was received in evidence and marked Defendant's Exhibit V.)

Mr. Hagerty: Let me withdraw the question and reframe [573] it.

(Testimony of Milton H. Olender.)

Q. At the time Mr. Root came to your establishment to make a first preliminary investigation or whatever it was in connection with this case, did you give him your books to look over?

A. I gave Mr. Root everything, my books, my inventories, my cancelled checks, my invoices. I gave him everything that I had.

Q. Now did he take the books out of the establishment or did he stay there and examine them?

A. I don't remember, but I don't believe that he took them out.

Q. Well, to your knowledge did he do some work in your place?

A. Oh, he worked there for days.

Q. Have you had these books in your possession in the recent past?

A. I might explain that. I think it will clear the matter up in your Honor's mind. These books have been out of my possession since early 1948. I have not seen them once or twice, except when I have been called on by Mr. Ringo and my counsel in the last week or two to look at them. Since these books are no longer my current books, when this investigation started or shortly before it, I set up the Hadley system which requires only two books and is much simpler to [574] handle. Everything is in two books. And my daughter-in-law is my bookkeeper and is handling those now.

Q. At whose suggestion did you put in that system?

A. I believe it was Mr. Ringo's suggestion. I am

(Testimony of Milton H. Olender.)

not sure, but I believe that he suggested the Hadley system to me. It's much better than what I had. I might add that I said four years. It is nearer five years since I have seen those books.

Q. At this time, Mr. Ringo——

A. Mr. Olender.

Q. What.

A. I am sorry, I am not Mr. Ringo.

Q. Sorry. Let me withdraw it. At this time, Mr. Olender, I will show you some additional invoices and ask you if you can identify them?

A. Yes, I can.

Q. What are they?

A. Well, these are invoices of the Western Military Supply Company, which Mr. Lewis Leavy is the owner, and these are the invoices from Barney's Clothes Shop in Los Angeles.

Q. And what transactions do they cover?

A. Well, these cover transactions which are reflected in my books, the Barney Clothes Shop—two invoices totalling \$2,160.03.

Mr. Drewes: I will object to any further testimony from [575] these documents which are not in evidence, your Honor.

Mr. Hagerty: Oh, yes. Well——

Q. In other words, it is a fair statement to say, Mr. Olender, that these invoices represent transactions by the suppliers with your firm?

A. That's correct.

Mr. Hagerty: At this time, your Honor, I will offer these invoices in evidence.



(Testimony of Milton H. Olender.)

The Court: For the same purpose?

Mr. Hagerty: Yes, your Honor, to trace the—and for also for the additional purpose, to prove that the Barney transaction, the cash purchase that found itself into the accounts payable——

Mr. Drewes: I wish to object, your Honor, on the grounds—with respect to the documents which you now have in front of you, your Honor, you will note that they concern 1944 transactions. If you will look further you will note, your Honor, that there is some correspondence attached thereto in letter form dated 1944, the writer of which is not here for cross-examination.

The Court: What relevancy would these 1944 transactions have? Here is a letter dated 1945 also.

Mr. Drewes: With respect to that particular document, your Honor, I would suggest that it be marked for identification. [576]

The Court: I will mark both of these for identification.

Mr. Drewes: I can't read that one. And I would prefer to have further information.

The Court: It may be marked for identification.

The Clerk: Defendant's Exhibits W and X for identification only.

(Thereupon the documents described hereinbefore were marked Defendant's Exhibits W and X for identification, respectively.)

Q. (By Mr. Hagerty): Mr. Olender, the Western Military Supply, is that firm owned or operated

(Testimony of Milton H. Olender.)

by Mr. Leavy, who was a witness on the stand here for the Government?      A. Yes, sir.

Q. Is he one of your principal sources of supply?

A. Well, you will find in checking the invoices that no other ten accounts were equal to his. Many more invoices.

Mr. Hagerty: Your Honor, before we leave this subject, in reference to this Barney transaction, which was partly represented by defendant's W for identification, we would like to offer into evidence the cashier's checks that the defendant used to pay cash for these items which later were reflected as accounts payable, thereby inflating his liabilities.

The Court: They may be marked for identification at this time. [577]

Mr. Hagerty: The checks—we are obtaining the checks from the Bank of America and they will not be available until this afternoon.

The Court: When they arrive they may be marked for identification in association with that exhibit.

Q. (By Mr. Hagerty): Now among your books which are in evidence here there is Exhibit defendant's J which is identified as a general journal?

A. Yes, sir.

Q. Yesterday His Honor asked you or directed some questions to you in reference to a journal, to which I believe you replied you didn't know what a journal was?

A. I don't think I said that.

Q. What did you say?

(Testimony of Milton H. Olender.)

A. Well, His Honor was questioning me about something about a journal entry and I didn't understand his question. I didn't think that he was asking me: Did I know what a journal entry was, because I most certainly do. I have seen thousands of them in my books, hundreds, and I thought he was referring to a specific transaction, and did I make a journal entry or would I make one. My answer evidently confused him because I am still confused about what he asked me.

Q. In other words, you do know what a general journal is?           A. I certainly do. [578]

Q. And this is one that was in your own books?

A. That's right.

Q. Defendant's Exhibit J?           A. Yes, sir.

Q. Yesterday Mr. Drewes questioned you in reference to handwriting in those books of yours, those various exhibits I have just enumerated.

A. Yes, sir.

Q. Do you find any handwriting of your own in those books?

A. None to do with the books itself. Later when my accountants were working on them there are a few notes in my handwriting referring to some of—what the items were, but no entries of any kind were made by me, none whatsoever. I know in one instance that the girl did not put the date at the beginning of the year in. I wrote above it, "1945," I believe, just so I knew where the year started. She hadn't done it.

Q. And did you offer to give examples of your

(Testimony of Milton H. Olender.)

handwriting to Mr. Drewes and his handwriting experts last night?      A. I did.

Q. Were those examinations made?

A. I haven't heard anything since.

Mr. Hagerty: No further questions.

#### Further Recross-Examination

By Mr. Drewes:

I just have one or two questions in [579] rebuttal.

Q. Mr. Olender, I show you now the well-known defendant's Exhibit N, your inventories, particularly with reference to January 1, 1946, the item of 322 serge suits which you state were in the basement and which were shown at the price of \$24.50. You testified that those suits were the residue of the purchases from Goodman?      A. Yes, sir.

Q. The purchases from Goodman were priced at \$25?      A. That's correct.

Q. You testified that \$24.50 in that record is an error?      A. Yes, sir.

Q. I now show you the defendant's Exhibit V, which has just been put into evidence, identified as invoice to you from the Dewey Sales Company dated in 1946. I ask you to examine it. You will note, will you not, that the invoice covers 100 suits sold to you at the price of \$24.50, is that correct?

A. Yes, sir.

Q. Is it not true that the 322 suits which are shown in the defendant's Exhibit N represents suits

(Testimony of Milton H. Olender.)

purchased on an earlier date from the Dewey Sales Company at the price of \$24.50?

A. How could they, Mr. Drewes? This inventory is of January—— [580]

Q. I said “earlier date.”

A. No, I don't see how they could.

Q. Does not the 322 suits shown as \$24.50 in your Exhibit N represent suits purchased before that date from the Dewey Sales Company at \$24.50?

A. No, sir.

Mr. Drewes: I have no further questions.

#### Further Redirect Examination

By Mr. Hagerty:

Q. Mr. Olender, yesterday Mr. Drewes examined you in reference to the names of revenue agents who had assisted you in the preparation of income tax returns. Could you give us the names of any of the revenue agents who assisted you in the preparation of your 1945 and 1946 returns?

Mr. Drewes: Objected to, your Honor. That has been asked and answered.

The Court: I think he did answer it maybe in part. He may answer it again.

A. I answered yesterday that I did not know the names of those parties.

Q. Where did you find them when you went to get their assistance?

A. The reason I did not know them—I recited a list of all the names of the agents who had helped



(Testimony of Milton H. Olender.)

me, and I believe the last name I recited was that of Mr. Sitron in the Oakland [581] office, and I went to Mr. Sitron—I don't remember whether it was 43 or 44 for the last time, and he was called into the service, and he was the last person that I contacted in the Oakland office. Immediately thereafter, during the war, the Bank of America—

Mr. Drewes: I ask that this recital be stricken, your Honor, as not responsive.

The Court: Yes, it may go out.

Mr. Drewes: The question was whether or not the witness had assistance in 45 and 46. He testified that he did not in response to my question yesterday. If he wishes to change that—

A. I did not say that I did not have assistance. I said I did not remember the names of the assistants.

Mr. Hagerty: Well, where did you meet these men that assisted you?

Mr. Drewes: May I object to that. The question to be put is if he did, and the answer would be "yes" or "no." And if he did, "Who are they?" I submit that is the proper questioning.

Mr. Hagerty: He testified that he didn't know their names but he did get the assistance.

Q. Why didn't you know the names?

Mr. Drewes: What are the names?

A. If I knew them, I would give them to you, Mr. Drewes. [582]

Q. (By Mr. Hagerty): Where did you meet the men?

(Testimony of Milton H. Olender.)

A. These men were men in the Bank of America, employed by the Bank of America for its customers, and they had different ones each year, and since I had no connections down at the Internal Revenue office since Mr. Sitron had left I went to these men and I did not know their names but they were from the Internal Revenue office and they gave me the assistance that I had been getting from the other men.

Q. Directing your attention now to the Defendant's Exhibit V, the very first sheet thereon, which is an invoice from the Dewey Sales Company pricing certain suits, 100 suits at \$24.50 each, and in connection with which Mr. Drewes had just examined you, were those suits ever in the basement of your concern?

A. I don't that matters, Mr. Hagerty. Mr. Drewes is pointing to my inventory as of January 1st.

Mr. Drewes: I object, as not responsive, your Honor, argumentative.

The Court: Yes, that may go out.

The question is—will you repeat the question, please, Mr. Hagerty?

Mr. Hagerty: I will withdraw it and reframe it.

Q. In reference to the merchandise represented by that invoice did you ever stock it in your basement? [583]      A. No.

Q. Can you tell the Court and the ladies and gentlemen of the jury and Mr. Drewes again what suits were the only ones you kept in the basement?

(Testimony of Milton H. Olender.)

A. The Goodman suits. Could I explain this, your Honor. It is so simple and it is an error of Mr. Drewes.

The Court: If you have an explanation——

A. Give me that, will you, please?

Mr. Drewes: The invoice is in front of him, is dated after January 1, 1946. I asked him if he made prior purchases from the same source. That is the only explanation.

A. You asked me if these were not the suits which were included in this inventory. That is what you asked me. [584] And they couldn't possibly be in the inventory when they were bought after the inventory was taken, is that correct?

Mr. Drewes: I did not ask you that question. The record will show, Mr. Olender.

A. Yes, you did.

Mr. Drewes: I did not ask you that question.

Mr. Hagerty: No further questions.

Mr. Drewes: No further questions.

Mr. Hagerty: You may step down, Mr. Olender.

(Witness excused.)

Mr. Hagerty: At this time the defendant will call Roland Hellman.

**ROLAND D. HELLMAN**

called for the defendant, sworn.

The Clerk: Please state your name, address and your occupation to the Court and to the jury.

A. Roland David Hellman.

(Testimony of Roland D. Hellman.)

Q. Spell your last name. A. H-e-l-l-m-a-n.

Q. Your address?

A. Home address, 315 California Avenue, San Rafael.

Q. And your occupation?

A. Public accountant. [585]

Direct Examination

By Mr. Lewis:

Q. Where is your office, Mr. Hellman?

A. Central Tower Building, 703 Market Street.

Q. How long have you been practicing public accountancy on your own?

A. I have been on my own in practice since a year ago last May, a year and a half approximately.

Q. Are you a registered public accountant in the State of California? A. Yes, sir.

Mr. Hagerty: Mr. Hellman, I wonder if you could raise your voice? I am sure that not everyone can hear you.

A. Yes, sir.

Q. (By Mr. Lewis): What did you do before you started in practicing on your own accountancy?

A. I was an Internal Revenue agent.

Q. How long were you an Internal Revenue agent? A. Five and a half years.

Q. Five and a half years. And to what kind of work were you assigned as an Internal Revenue agent?

A. My general assignment was all income tax cases. I did—I was handling cases involving net

(Testimony of Roland D. Hellman.)

worth statements and I was associated with several cases described as fraud cases or such as net worth statements involved, general line of [586] Revenue agent's work as examining—your assignment would be anything from individuals, corporations, partnerships, and so forth, varying degrees.

Mr. Hagerty: We are still having difficulty in hearing you, Mr. Hellman. Please speak up.

A. Is that better?

Mr. Hagerty: Yes.

Q. (By Mr. Lewis): How many net worth cases do you think you worked on approximately both in the Government and as a private public accountant?

A. Well, it is hard to know exactly. I haven't ever tried to add them up. Probably thirty, forty.

Q. Now, Mr. Hellman, I am going to show you defendant's Exhibit G, which is a thousand dollar check, Army and Navy Store, signed Milton Olender, the defendant here. What is the date of that check?

A. The check was drawn on December 23, 1944.

Q. Did you reconcile—look at the back of it and see if you can see what date it was deposited?

A. The date the check was paid, deposited, on January 10, 1945.

Q. In the stipulation in this case we state and agree: "Cash in bank, the Army and Navy Store (net after outstanding checks), \$19,881.55."

In your reconciliation of the bank account, does that [587] \$19,881.55 include that check, that balance, or is that after that check was issued?



(Testimony of Roland D. Hellman.)

A. That is the balance after this check was issued.

Q. In other words that would show as an outstanding check in a reconciliation of the bank account?

A. It is in the reconciliation that I made. It shows as an outstanding check and it ties in with the books within 71 cents. I didn't have all the figures to reconcile it right down to the penny. I have the reconciliation here if you want to look at it, Mr. Lewis.

Q. Well, we might take a look at that reconciliation.

A. Along with his actual bank statement—there is his bank statement at the end of 1944 and copies of the reconciliation showing the \$1,000 as an outstanding check.

Q. That is check number 2,000?

A. That is the check we have here, number 2,000.

Q. Now—

Your Honor, I might state at this time, as we have this witness on the stand, we are going to propose a simple net worth, just as the schedules of the Government, and then we are going to have Mr. Hellman explain that one, and I am going to have him explain for the benefit of the jury each of these transactions as he goes through that are under debate at the present time.

Q. Then in making up a net worth statement, that \$1,000 [588] would be handled properly how?

(Testimony of Roland D. Hellman.)

A. It would be, according to this, it would be cash on hand of Mr. Olender in his personal possession, not in the store.

Q. And it was not cashed until January 10th, it would not show up in any other asset or bank account until January the tenth?

A. That's correct. We traced that through and found it had been deposited in his account on January the—the date it was cashed, January 10, 1945.

Mr. Lewis: Your Honor, I am going to offer this check into evidence, at this time.

The Court: It will be marked.

The Clerk: Defendant's Exhibit G heretofore marked for identification——

Mr. Drewes: I made an objection, your Honor. The witness testified that he did not have all of the items. I would like to have that matter explored by counsel.

The Court: He said there is a difference of 76 cents.

A. 71 cents, on the bank reconciliation.

Mr. Drewes: That could be the result of several large items in approximately the same amount, could it not? The fact that the difference is only 71 cents in the reconcililation does not mean anything necessarily.

A. Well, there was a list of outstanding checks. You can [589] check—well, let me—if I may have the bank statement. We have the canceled checks here, the outstanding checks. And Mr. Drewes wants

(Testimony of Roland D. Hellman.)

me to explain how to reconcile the bank account. I will.

Inasmuch as the bank statement here up to the period—the bank closes out it as of December 28, 1944. At that date the balance on the bank statement—would you like a copy of it (to the Court)?

Mr. Drewes: It isn't necessary—I did not ask the witness to explain how to reconcile the bank account. He stated that he did not have all the items. I would like to have an elaboration.

A. I did not have the books of—of Mr. Olender—the books of Mr. Olender were in the possession of the Court. I could not trace all of the items to see where somebody made a 71-cent mistake. It can be definitely proven that this 2,000—this check number 2,000 for \$1,000 was one of the checks that were outstanding as of December 31, 1944.

Mr. Drewes: Do you know that that check was included or was not included in the stipulated amount of \$19,000?

A. That is not included in the 19,000 balance—\$19,881.55 balance shown by the books. It had been already subtracted from the total in the books. It was therefore [590] a cash item in Mr. Olender's hand.

Mr. Drewes: How do you know that?

A. Because he deposited it in his personal bank account on January 10, 1945. It must have been in his possession over the year end.

Mr. Drewes: How do you know it is not in the figure of \$19,000, the figure that is stipulated?

(Testimony of Roland D. Hellman.)

A. By looking at the books. You can tell the check was written up and posted as of December, 1944, withdrawal by Mr. Olender from the business, and if the books—the books weren't balanced—there is a trial balance for the books at that period. The books were in balance. Mr. Olender had been charged with drawing out \$8,000 from the business.

Mr. Drewes: Did you compare it—did you verify the \$19,000 figure and the stipulation, compare it with the books of the taxpayer?

A. The balance in the general ledger is the same as in the stipulation, \$19,881.55, cash account—balance in the cash—in the bank for the books, December 31, 1944, was \$19,881.55. Now that is the figure that was presumably—well, I wouldn't say presumably, but it is in the books in pencil. They showed the debits on one side and the credits on the other. That is a pencil figure. Now, I did not run adding machine tapes throughout the year [591] to determine that this pencil addition figure was correct, but it is the same figure you have used in the stipulation, and that is probably why we are off 71 cents. There could have been an error any place during that year. If the books—but presuming the bookkeeper had reconciled her bank balance each month, there is the possibility of a 71 cents mistake in the month of December.

Mr. Drewes: You have relied upon penciled figures in the trial balance as supporting your conclusion that the figure you find in the stipulation does not include the \$1,000?



(Testimony of Roland D. Hellman.)

A. Inasmuch as the figure was used in the stipulation and that is the figure per the books, there is no reason why I shouldn't rely on the books if the reconciliation shows this check is outstanding.

Mr. Drewes: Very well.

The Clerk: Defendant's Exhibit G in evidence.

(Thereupon Defendant's Exhibit, previously marked for identification, G, was received in evidence and marked Defendant's Exhibit G in evidence—check number 2,000 in the amount of \$1,000.)

Q. (By Mr. Lewis): Now, then, Mr. Hellman, will you take the accounts payable. In the first place—

Your Honor, I think it might be all right for him to explain what a ledger is. [592]

Q. Will you explain to the jury what a ledger means? A. A general ledger or just—

Q. General ledger.

A. A general ledger. A general ledger, such as we have here for Mr. Olender, is an account—a list—a chart of accounts or accounts set up in book form in order to reflect balances of assets, liabilities, and capital investment or net worth at various periods.

It is not a source of original entry. Original entries are made into cash journals, cash receipts and cash disbursements, sales records, purchase invoice registers, and from those original entries are the—the summaries are posted to a general ledger.



(Testimony of Roland D. Hellman.)

Q. And in a general double entry bookkeeping system, if all proper entries are made, that is, whether they debit, there have to be offsetting credit, and if all proper entries are made the general ledger is always self-balancing.

You add up the debits and they should equal the credits at any one time.

If they don't, your books are out of balance.

That is how a bookkeeper or an auditor determines whether books are in balance or not. They add up the assets, they add up the liabilities and the capital investment account, and if they are in balance, it is presumed— [593] the books are correct. Of course, there can be errors and compound errors which might make the books still balance but generally speaking if they are in balance they are presumed to be correct.

Q. Now, Mr. Hellman, there has been testimony here as to the Riverdale ranch about the capital gains. According to the transcript, Mr. Drewes states that the capital gain on the Riverdale ranch, if the cost basis had been directly used, was \$2,016. What is the maximum amount of—first, explain to the jury what a capital gain is.

A. Well, a capital gain is represented—is interpreted by the revenue laws for computing income tax, and is the excess of the selling price of an asset which we describe as a capital asset over the cost basis. As an example, if, in the case of real property, you happen to own a home that you paid \$5,000 for and you sold it for \$10,000, you have have a capital

(Testimony of Roland D. Hellman.)

gain of 5,000. If it was held over six months it would be a long term capital gain, and only 50 per cent of the profit would be subject to tax. That is up to the 1952 law.

Q. Now, during the years 1945 and '6, if there was a capital gain of \$2,016, what would be the tax that the taxpayer would have to pay on that capital gain?

A. On \$2,016 there would be, as I say, if it was a long term capital gain, held over six months, you would [594] divide that—take 50 per cent of that, it would be \$1,008, and then if the tax bracket was over 50 per cent, we would use the alternative tax and take 50 per cent of that. So the maximum would be \$504.

Now, if his tax bracket was not 50 per cent, the tax would be computed at the lesser rate, lesser than 50 per cent.

Q. In other words, the maximum tax would be \$504?

A. On that basis, yes.

Q. You have had access to Mr. Olender's books, have you not?

A. Yes, sir, I have.

Q. You also had available and looked over Mr. Saraga's books?

A. I saw them, yes.

Mr. Drewes: Your Honor, at this time I would like to have these Exhibits of the Goodman transaction distributed to the jury to get the accountant's explanation of them.

The Court: We might take the morning recess and then immediately after take up the Goodman transaction.

(Testimony of Roland D. Hellman.)

With the same admonition, ladies and gentlemen, not to discuss the case or form any opinion.

(Recess.) [595]

Q. (By Mr. Lewis): Mr. Hellman, it has been testified to here that \$20,550—"Purchased cashier's checks by cash in January." They were given to Leavy and Leavy paid to Mr. Goodman for merchandise, 822 sailor suits, at \$25 each. They were delivered.

Now, starting with that premise there has been further testimony that Mr. Leavy sold 200 suits at cost for Mr. Olender to Lerman.

You prepared this chart, did you not?

A. Yes, I did.

Q. You have read the transcript in this case?

A. Yes, I have.

Q. Will you start and explain this chart to the jury from an accounting basis?

A. This chart starts out with this \$20,550 cash that Mr. Olender took from his safe deposit box, and we follow it from there. Right to begin with, at the top of the chart, you see Mr. Olender on the left-hand side. On the right side is Mr. Olender's business, which is the Army & Navy Store.

The reason this chart is made up this way is to show the flow of personal funds, some of which went into the business and some of which remained in his personal possession.

Following down from the top, the figure \$20,550, we [596] find the \$5,000 item with the arrows point-

(Testimony of Roland D. Hellman.)

ing to the right. "Leavy sold 250 at cost for Mr. Olender," tracing it through Mr. Olender's books which we have here.

Q. Will you do that right now to see what happened to that \$5,000?

A. It says the \$5,000 was deposited in the store bank account on June 19, 1945. That was handled through the general journal.

Q. Explain what a general journal is?

A. It is a journal used to record entries on the books when you don't have a specific record. For example, if you would have a purchase record to record your purchases, such as we have here, then the entry would not normally be put in the general journal unless it was an unusual transaction. If you have a cash disbursement record, such as we have here, you would not record that in the general journal but other items of an unusual item are recorded in the general journal.

Now, when an item is recorded in there, there are debit and credit offsetting entries and they are both posted to the general ledger which we described earlier, and that general journal is the source of the original entry going into the general ledger. It happened to be Mr. Olender's policy to record the sales through the general journal. He did not have a separate book to record his [597] sales. As I understand the sales weekly or his sales were deposited according to the cash register readings and the week's deposits were added up and an entry was made in a general journal with a debit to cash,

(Testimony of Roland D. Hellman.)

that is, a debit, and the offsetting credit would be to sales. They would have been posted into the general ledger.

Now, in the case of the \$5,000 deposited for merchandise sold to Lerman, on June the 19th, 1945, the general journal shows a debit to cash of \$23,000. Now, we have to offset the debit with an equal amount. A deposit of \$10,000 and a credit to—throughout the books, Mr. Olender is referred to as M. O.—a credit to M. O. Capital Account reinvestment. That is for \$13,000. Now, I have Mr. Olender's duplicate deposit book which I don't suppose is in evidence.

Q. Well, I think you could look it over and show how that is broken up in the investment account.

A. The credit, offsetting credit of \$23,000 was posted to—there had been posted \$23,000 to Mr. Olender's investment account and it was later corrected and \$13,000 to his investment account, and \$10,000 to a liability. If you keep in mind a debit is something that you receive and a credit is something that you give, if your credit is the right hand side, the debit is the left-hand—is the left-hand side of the books, that is, in a double set of books, debits and credits. The \$13,000 credited to the investment account is not detailed in the general [598] ledger. The breakdown of the \$13,000—you really have to go to the bank deposits for that day when they deposited the \$23,000 cash. These are carbon copies of Mr. Olender's deposits; as he made a deposit in



(Testimony of Roland D. Hellman.)

the bank, he used a carbon and the original.

Mr. Drewes: Your Honor, I will have to object to this witness testifying to documents which are not in evidence.

The Court: Do you wish to offer the book?

Mr. Lewis: No, I can't offer the book, your Honor, but I will have to put Mr. Olender on the stand.

(To the witness): Will you step down just a moment?

MILTON OLENDER

called as a witness, having been previously duly sworn, testified as follows:

Redirect Examination

By Mr. Lewis:

Q. Mr. Olender, what is that book?

A. That is a duplicate deposit book.

Q. Whose is it?

A. It is mine, the Army-Navy Store.

Q. Is it kept in the regular course of your business in the Army-Navy Store?      A. It is.

Mr. Lewis: Your Honor, I will offer the deposit book into evidence. [599]

The Court: It may be marked.

The Clerk: Defendant's Exhibit Y in evidence.

(The deposit book just referred to was received in evidence and marked Defendants' Exhibit Y.)

Mr. Lewis: That is all.

(Witness excused.)

## ROLAND HELLMAN

previously sworn, resumed the stand and testified further as follows:

## Direct Examination

By Mr. Lewis:

Q. Now, Mr. Hellman, will you please look at the deposit slip that corresponds to the investment account statements to which you were just referring?

A. The date in the general journal of June, 1945, when this entry was made debiting cash to the bank for \$23,000, we find that he deposited on June of 1945—made up deposits for \$23,000, broken down as follows: One check in the amount of \$10,000 to represent the money he borrowed from Mr. Blackstone; two checks of \$2,500 each, which were checks through Leavy, and there is a \$5,000 item and a \$3,000 item which represent Cashier's checks deposited that had previously been purchased—Mr. Olender's own cashier's checks.

Q. All right. So as an account practice, then, could you state that the \$5,000 received from Lerman, deposited in the store bank account June 19, 1945, was an additional [600] investment credited to M. Olender capital account on the bank books?

A. Yes, it was.

Q. Now, I will proceed with your—at this point I would like to ask you, was it the effect of entering his wholesale sales on the books of a retail merchant?

A. Entering wholesale sales on the books, a re-

(Testimony of Roland D. Hellman.)

tail merchant would distort the ratio of profit he would realize on a retail sales compared to wholesale sales. For example, a retail merchant's fair markup is between 30 and 40 per cent—let's say 35 per cent, and if a man sold \$1,000 worth of merchandise, he should realize \$350 worth of profit on the merchandise. On wholesale sales, if there is a 10 per cent profit on a sale, a man would only make \$100. If it was a wholesale or a retail transaction, at cost, there would be no profit realized, and if that sale was mingled with a retail sale, it would distort the ratio of profit, thus not allowing the proprietor to have an idea what his over-all profit is, and also a basis of suspicion of anyone examining the books as to whether the books are correct. It is a common practice to determine whether the business is reporting the proper profit by taking the gross profit and determining what it is. If it is in line with other businesses of that type, then it shows that the books would reflect a fair profit, but [601] the entering of an item such as we have here, the \$8,550—this next item, if you note on this schedule on the next side as we bring it down, we have the \$5,000 item we just described below as an \$8,550 item, and below that is a \$7,000 item. Those items back up the \$20,500. Now, the second part of the \$20,500 item—the arrows point to the right there indicating going into the Army-Navy Store for 342 suits unsold by Leavy, transferred to the store, \$8,550. These were not charged to purchases on the store books. This was no expense claim for this merchandise on the books

(Testimony of Roland D. Hellman.)

of the Army-Navy Store. 20 suits were sold through routine sales by ringing them up on the cash register, which is common practice. A lot of businesses have their registers when they have a sale and that is the only record kept of the sale.

By transferring this \$8,550 worth of merchandise into the Army-Navy Store, and by ringing up the sales of the 20 suits on the register and by not charging purchase expense, the cost of the goods purchased on the books, it meant that Mr. Olender contributed \$8,500 worth of merchandise to the store and never took any credit on the books for having done so, which means when the merchandise was sold, it all became profit—that is, profit on the books. He had his original cost when he purchased with cash. By taking the merchandise into inventory, the [602] portion was taken into inventory at the end of '45. By increasing his inventory, it reduced his over-all cost during the year for the other sales made, and that resulted in the understatement of the cost of the goods that he actually sold during the year and resulting in corresponding overstatement of profit of \$8,550 for the year 1945.

Now, due to the failure of the bookkeeper to make an entry on the books recording this credit to Mr. Olender's capital account, when it—at the time the merchandise was taken into inventory, he apparently, as was testified, the bookkeeper was a part-time bookkeeper. Mr. Olender was managing the affairs of the store and he took the inventory.

(Testimony of Roland D. Hellman.)

Mr. Drewes: I will object, your Honor. This is entirely hypothetical.

The Court: What the bookkeeper may have realized may go out.

The Witness: The bookkeeper then failed to record on the books a credit to Mr. Olender, thus, as I previously mentioned, when the profit was determined, it was overstated through the failure to charge purchases and credit; as I told you, you have to have a debit and a credit. You are charging purchases. You have to have an offsetting credit. Mr. Olender's capital account should have been credited, but it was not. As a result, when the [603] merchandise was taken into inventory, the result of that was for it to appear as an additional profit. Profit, when you have your debits and credits, and when the books are balanced, the profit from a business shows up as a credit, the same as the capital account is a credit. Instead of a credit going to the capital account, the credit went to a profit account.

Q. Just a moment, Mr. Hellman, you audited many retail sales organizations?

A. That is correct.

Q. When we refer to the inventory, what generally is common practice throughout the whole retail setup and in stores the equivalent size; where does the bookkeeper get his information for the inventory?

A. The bookkeeper would merely get the total inventory. Now, depending upon the policy—Mr. Olender in this case took the inventory. He made



(Testimony of Roland D. Hellman.)

his own tabulations. In some instances, of course, it might be that the proprietor might take the inventory or the bookkeeper might make the mathematical computation; as Mr. Olender testified, he prepared this himself, and showing a figure as stated on the inventory that would be the figure on the books. This is the type of transactions that aren't in the regular course of business. It wouldn't come through the cash disbursal journal. It would only go [604] through the cash purchase journal. At the end, it is necessary to make an entry to describe the change in inventory, and the entry for that is to debit. First we have an inventory on the books already. Let's get Mr. Olender's inventory account here. I will give you his specific figures here.

In his books, it is described as merchandise inventory. The inventory for the books at the beginning of 1945 was \$85,011.26—wait a minute. At the end of the year, a credit is made crediting in the journal entry here, a credit is made crediting that out of the inventory—crediting a profit and loss account, and a new inventory is set up.

Now, the difference between a new inventory and the old inventory results in either additional costs of sales or, if it happens that the new inventory at the end of the year is greater, then it would reduce the cost of the sales for the year.

In this instance, the new inventory was \$83,394.64. That entry was put through the journal, as was customary, and posted to the merchandise inventory account. Now, that inventory of \$83,394.64 is the in-

(Testimony of Roland D. Hellman.)

ventory shown on Mr. Olender's inventory, which are on exhibit here, and which include \$7989 worth of remaining goods from this Goodman's transaction here, ones that he did not sell for [605] Mr. Leavy—did not sell for him exclusive of the 20 suits, inasmuch as the 20 suits were sold.

Mr. Drewes: If your Honor please, before the witness testifies further on these transactions, I would like to have counsel ask him what source of information he relies on in determining that the 20 suits were taken into inventory for purchase were sold.

Mr. Lewis: He is relying on the defendant's testimony, isn't that correct?

The Witness: That is correct.

Mr. Drewes: Relying entirely on the defendant's testimony?

The Witness: As to this specific item and the inventory records on exhibits. The transactions have to be described some way.

The Court: Counsel asked the additional question: How do you determine the 20 suits were sold?

The Witness: That is a mathematical deduction. For \$20,550, he could buy 822 suits. From the 822 suits, there were 200 hundred that went—200 that were sold to Lerman, and the—200 sold to Lerman, and then the other 240—280 suits were sold for \$7,000. That makes 480 suits which were a cash transaction. They were sold at cost. That left a balance—subtracting the 480 from your 822, you have 342 suits remaining. Mr. Olender's [606] tes-

(Testimony of Roland D. Hellman.)

tified that there were 322 of these suits picked up in the inventory, therefore, 20—it is logical, following in a logical order, that the 20 suits must have been disposed of in the regular course of the business. It reflected an income, as the cash register states.

Q. (By Mr. Lewis): Now, while we are at that point, will you take the cash sales book there and describe to the Court and the jury just how that book is made up in Mr. Olender's operation?

A. The sales?

Q. Yes. What book did they appear in?

A. He does not have a separate sales journal. In some lines of business, they record the daily sales daily. Other businesses, the sales could be summarized. In this business here, Mr. Olender's books were—credits were made to the sales in the general ledger. Now, there is an account called Sales. In the general ledger, there is an account for sales account—sales on the books or credits. When you have such money for a sale, you receive cash. That is an asset. A corresponding entry has to be made to sales. [607]

In the general journal rather than in the cash sales record there are entries—. As an example in looking here in 1945, August, here, weekly, August 6th, August 13th, August 20th, 27th, 31, we close out each month—is complete. There were charges to cash that were posted to the cash account and credits to sales. No, the monthly sales were then posted into the sales account in the general ledger. Now that appears to be the amount of actual record as

(Testimony of Roland D. Hellman.)

far as the books are concerned. The cash debits of course tie in with the bank deposits and that is how the cash items were the same as the credits to sales.

Now throughout the year, let's see,—I don't recognize any sales other than coming through the cash journal as being posted through the sales record. So that you might say that all of the sales were recorded in the general ledger by means of entries, weekly entries into the general journal, which were summarized at the end of the month and posted there into the general ledger, which also ties in with the cash deposits made representing cash sales.

And as I understand the cash—. I believe cash was—not “believe” but the deposits—we have the deposit book in evidence—that's right—the deposit book—the money going into the bank is reflected by the cash shown in the book here, and also the sales—. We don't have register sales records. Mr. Olender testified as to the register sales. [608]

Mr. Lewis: Did your Honor want to say something? The Court motioned. The Court motioned me when I went to ask another question.

The Court: What is it, Mr. Clerk?

(Discussion between the Court and Clerk.)

The Court: One of the representatives of the Government desires to attend a meeting, as I understand it from the Clerk. Is that correct?

The Clerk: Yes.

The Court: Then we will take a recess at this

time and resume at 15 minutes past two, ladies and gentlemen, with the same admonition to you, not to discuss the case under any conditions or circumstances, not to form an opinion till the matter is submitted to you.

(Thereupon an adjournment was taken until 2:15 o'clock p.m. this date.) [609]

September 25, 1952, at 2:15 P. M.

Mr. Lewis: Your Honor, we have the bank here with the bank records that we would like to introduce at this time. Mr. Hellman, will you step down.

CLIFFORD F. CARROLL

called as a witness for the defendant, having been previously sworn, was examined further and testified as follows:

The Clerk: Mr. Carroll, would you please restate your name for the record?

A. Clifford F. Carroll.

Direct Examination

By Mr. Hagerty:

Q. Mr. Carroll, you are an employee of the Bank of America, main office in Oakland, is that true? A. I am.

Q. As part of your duties in that employment you have certain records at the bank, have you?

A. It is.

Q. Certain records to look after?

A. Yes, sir.



(Testimony of Clifford F. Carroll.)

Q. In response to our requests have you brought with you certain cashier's checks?

A. I have.

Q. Could we see them please? (Witness [610] producing.)

Mr. Hagerty: At this time, your Honor please, pursuant to a statement that I made earlier I would like to offer in evidence two cashier's checks of the Bank of America in Oakland, and I would like to offer and substitute photostats for the originals, photostats that correspond to the original cashier checks made payable to——

The Court: What is this in association with?

Mr. Hagerty: This is in association with the transaction of Barney's in Los Angeles.

Mr. Drewes: I would ask that they be marked for identification until they are tied up.

The Court: They may be marked for identification. This involves 100 sailor suits, Barney's?

Mr. Hagerty: I just don't know how many it involves.

The Court: But, in any event, I will mark them for identification. It is part of——

Mr. Hagerty: Yes, part of the transaction that was a bookkeeping error.

The Clerk: Defendant's Exhibit Z for identification only.

(Cashier's checks marked Defendant's Exhibit Z for identification only.)

Q. (By Mr. Hagerty): Did you also bring with

(Testimony of Clifford F. Carroll.)

you, Mr. Carroll, an additional card record of a safe deposit box of the defendant, Mr. Olender? [611]

A. I have.

Q. And what is the number of that safety deposit box card index that you have?

A. The original number was 2912 which was later transferred to box number 56.

Q. And that box number 56, is that the record that you brought the other day and introduced here in Court? A. That is.

Q. I show you here a photostatic copy of the record that you have there. Does that appear to be a true and correct copy of the original record that you have? A. It is.

Mr. Hagerty: At this time, if your Honor please, I wish to offer in evidence this photostatic copy as Defendant's next in order, indicating the earliest date of the box the defendant had in the bank in Oakland.

The Court: It may be marked.

The Clerk: Defendant's Exhibit AA in evidence.

(Safety deposit record card marked Defendant's Exhibit AA in evidence.)

Mr. Hagerty: You may cross-examine.

#### Cross-Examination

By Mr. Drewes:

Q. Mr. Carrol, in connection with box 2912, subsequently referred to another number, do you know how large that box is? [612]

(Testimony of Clifford F. Carroll.)

A. No I do not.

Q. And further in connection with the Defendant's Exhibit Z the two cashier's checks payable to Barney's Clothes Shop to which you have just testified, did you bring with you the application for these two checks?      A. No, I did not.

Q. Did you look for the application?

A. No, sir.

Q. Were you requested——

A. No, sir.

Q. ——to bring an application?

A. No, sir.

Q. Will you do so, Mr. Carroll?

A. I will.

Q. Advise me if the application for these two checks is in the records of the bank.

A. I will look for them when I return to the bank.

Mr. Drewes: Thank you.

Mr. Hagerty: At this time, if it please the Court, I have requested the originals may be returned to Mr. Carroll and we just have the photo-stats in evidence. It will make it that much more easier for him to locate the applications.

Mr. Drewes: I have no objection.

The Court: They may be marked. [613]

The Clerk: Defendant's Exhibit Z heretofore marked for identification now in evidence.

Mr. Hagerty: Here are your originals.

Mr. Drewes: What number did you say, Mr. Clerk?

(Testimony of Clifford F. Carroll.)

The Clerk: They are for identification and are now in evidence.

The Court: They are for identification only?

The Clerk: Yes, sir.

Mr. Hagerty: For identification? I will prove them right now with the defendant.

The Court: These are only now for identification, Mr. Magee, please.

Mr. Hagerty: No further question of Mr. Carroll.

Mr. Drewes: Oh, Mr. Carroll, at the time that you looked for the application for those two checks will you also determine for me the size of this safety deposit box, 2512, can you do that?

A. 2512—

Q. Can you do that?

A. 2512—you mean by the size you mean the size of the dimensions of the box, rates per year to rent the box?

Q. The size, the dimensions of the box.

A. The dimensions of the box?

Q. Yes, and with relation to the sizes that are available. A. What's that? [614]

Q. With relation to the sizes that are available in the bank. A. Oh, yes.

Q. The bank rents boxes of various sizes, does it not? A. Yes.

Q. I would like to know whether that is a smaller box or larger box, or whatever your investigation reveals in that respect.

A. I will do that.

(Testimony of Clifford F. Carroll.)

Mr. Hagerty: And further along that line, Mr. Carroll, would you also ascertain for us the dimensional size of box 56, the transfer box in this case? A. That is box 56 and 2912.

Mr. Hagerty: Thank you, Mr. Carroll.

A. You are welcome.

Mr. Hagerty: Mr. Carroll, just as a reflection, are you sure that this first box, the number is 2512? This is box 2912. The first that bears the number 2912, Mr. Carroll. A. That's correct.

Q. In all events, you will learn for us the dimensions of the original box that Mr. Olender had there and the second one which is designated as number 56? A. That I will do.

Mr. Hagerty: Thank you, Mr. Carroll. [615]

(Witness excused.)

Mr. Hagerty: At this time we will call the defendant to the stand, your Honor.

MILTON H. OLENDER

defendant, having been previously sworn resumed the stand and testified further as follows:

Redirect Examination

(Resumed)

By Mr. Hagerty:

Q. Mr. Olender, I show you here two photostats designated as Defendant's Exhibit Z for identification and ask you if you can identify them?

A. Yes, I can.

Q. What are they?



(Testimony of Milton H. Olender.)

A. They are two cashier's checks, one dated December 12, 1944, for \$248.26 and the other dated November 9, 1944, for \$1,911.77 made out to Barney Clothier Shop.

Q. Can you tell us the source of those checks?

A. At the request of Mr. Barney, from whom I had purchased that amount of merchandise, I purchased these two cashier's checks with cash in the Bank of America and mailed them to him or gave them to his brother. I don't remember just how he got them. They were either mailed or sent through a relative of his.

Q. And these checks were in payment of merchandise you had bought from him?

A. Yes. The Court said a little while ago "sailor suits." [616] They were not for sailor suits. They were for, oh, fifty or sixty items of merchandise on the invoice there.

The Court: Well, I was mistaken in that respect. My recollection is that I referred to them that way. I recall the items now.

Mr. Hagerty: At this time, Mr. Olender, I show you Defendant's Exhibit W for identification and ask you if you could tell his Honor and the ladies and gentlemen of the jury what these checks were used to pay for?

A. These checks were used to pay for these invoices from the Barney Clothes Shop in Los Angeles.

Mr. Hagerty: At this time, if your Honor please, I will offer into evidence the checks indicated as

(Testimony of Milton H. Olender.)

Defendant's Exhibit Z for identification and the invoices which are Exhibit W for identification.

Mr. Drewes: If your Honor please, I have examined both but I haven't compared them. May I do that?

Mr. Hagerty: Surely, yes.

The Court: What is the plain relevancy of this introduction?

Mr. Hagerty: This transaction is part of about \$6,900 worth of purchases that the defendant paid cash for and yet they were taken through a book-keeping error and charged into his accounts payable column. Therefore, they inflated his liabilities and subsequently reduced his net worth, which [617] bookkeeping transaction is—as we will point out here on the records through the accountant—which matter was not discovered by us until last week.

Mr. Drewes: If your Honor please, I missed almost all of that.

The Court: I asked counsel—. I can't see any prejudice results from the statement. He merely added that this transaction relates to a part and parcel of a transaction which was not accounted for in the books to the extent that the accounts payable did not reflect the checks in question. Therefore, when it is considered the net worth will be increased rather than decreased when this transaction is accounted for.

Mr. Hagerty: Yes.

The Court: That is the sum and substance.

Mr. Drewes: Is this another situation wherein

(Testimony of Milton H. Olender.)

the items were presumably picked up as accounts payable although they had in fact been paid for?

Mr. Hagerty: Identical as the slips transaction, yes.

The Court: You claim these matters were discovered by the accountant subsequent to the stipulation being entered into?

Mr. Hagerty: Yes, your Honor.

The Court: All right.

Mr. Drewes: I will ask your Honor that they continue [618] being marked for identification until tied into the books in some fashion.

The Court: Well, the bookkeeper will testify. They may be marked for identification. The bookkeeper will correlate them, I assume, in some way.

Mr. Hagerty: You may cross-examine.

### Recross-Examination

By Mr. Drewes:

Q. With respect to these two checks which are Defendant's Exhibit Z for identification, one of them marked \$2484.26, dated December, 1944, and one in the amount of \$1911.77, dated November 9, 1944, Mr. Olender, is it your testimony that you purchased these at the Bank of America?

A. Yes, sir.

Q. And how did you pay for them?

A. With cash.

Q. And from what sources did the cash come?

A. I don't remember now, Mr. Drewes.

(Testimony of Milton H. Olender.)

Q. Do you have any record which would indicate the source? A. No.

Q. The source of cash? A. I haven't.

Q. It was stated by your counsel in response to a question asked of him by the Court that this particular transaction was discovered by your accountants after the stipulation was [619] entered into. Is that correct?

A. I believe so. I didn't work with the accountants. They did all of the work.

Q. Do you recall when?

A. Oh, this last week—oh, probably Sunday, or Monday. Just the last few days.

Q. Did your accountant ask from what source the cash came? A. I don't remember.

Q. You don't remember whether he asked you?

A. I don't remember. I have been asked so many questions lately I don't remember what I have been asked.

Q. There is no question in your mind, Mr. Olender, but that in November and December of 1944 you purchased these two cashier's checks?

A. No, there is no question at all.

Q. Your name, of course, doesn't appear?

A. No, it doesn't.

Q. Neither does the name of the Army and Navy Store? A. No, it doesn't.

Q. You can't remember whether your accountant asked you last week where you got the cash?

A. I don't remember. No.

Mr. Drewes: I have no further questions.

Mr. Hagerty: No questions.

(Witness excused.) [620]

## ROLAND D. HELLMAN

called for the defendant, having been previously sworn, continued his direct examination.

Direct Examination  
(Resumed)

By Mr. Lewis:

Q. I think at the recess we were at the point where we were determining what the books will show in cash sales, the method of handling cash sales. Checking the item \$8550 on the right hand of the sheet. In explanation of that, I would like to ask Mr. Hellman, from your experience in a business of this size or type, is it the normal procedure where the sales are all cash sales to keep a record for accounting purposes of each individual sale?

A. No, it is not.

Q. Now will you describe the effect—. I will show you the returns of the taxpayer for 1945 and '46, being Government's Exhibits 1 and 2. What is the net income reported on the return for the year ending December 31, 1945?

A. The net income on the return of Milton Olender—

Q. You might combine—

A. You want the total income of the husband and wife?

Q. Yes. A. Before splitting?

A. Yes. The total income.

Q. I think it is right here on the board (indicating blackboard). [621]



(Testimony of Roland D. Hellman.)

A. Total income \$44,718.48. That was before deductions, nonbusiness deductions.

Q. I mean—I want the figure for the unreported net income for 1945, which would be—there is a figure \$46,985.16, is there, on the return?

A. The figure that is shown—

Q. No, I mean \$41,067.61.

A. That figure does not appear right on the return.

Q. Well, does it appear as a combination of the net income on both returns?

A. I do not have Mrs. Olender's return.

Q. I will hand you those returns, which is Exhibit numbers 3 and 4.

Mr. Drewes: We will stipulate to those two figures, your Honor.

Mr. Lewis: All right.

Mr. Drewes: Combined reported net income of husband and wife for the two years.

A. \$41,067.61 is the total net income reported on the two returns for 1945.

Q. (By Mr. Lewis): Now what would be the effect of putting in \$8,550 worth of suits into the inventory without charging it to purchases on the store books on the net income of the taxpayer based upon those figures?

A. The effect on the tax return would be to reduce the [622] profit shown from the business.

Mr. Drewes: If your Honor please, it was my understanding that the Goodman transaction was gone into by the defense not for the purpose of

(Testimony of Roland D. Hellman.)

impeaching the stipulation. I believe that Mr. Lewis so stated. It appears now that the effect of this testimony is to show that the inventory figures in the store as stipulated to were not correct.

Mr. Lewis: No, we claim that they are correct. That these suits were included into the inventory, your Honor, but we are showing that accepting that inventory figure without having a purchase agreement or charging the sales to purchases, that the income of the taxpayer was over reported because he had not charged purchases in his books for this \$8,550.

The Court: Well, it is rather to show a correction or omission, is that correct?

Mr. Lewis: That is right, in income as reported.

The Court: I will allow it.

A. The return shows the merchandise purchased during the year of \$150,458.30. If the \$8,550 would have been added to that, it would have increased the purchases to \$159,008.30. The effect of that would have reduced the profit from the store operations from \$42,722.61 to \$34,172.61, thus reducing the net income reported from \$41,067.61 to \$32,517.61. [623]

Q. (By Mr. Lewis): All right. Now Mr. Hellman, now proceed down through to, on the left hand column, where it states, "280 suits sold by Levy for M. Olender, \$7,000."

A. Following the chart on the left side, as Mr. Lewis pointed out, the \$7,000 represents proceeds

(Testimony of Roland D. Hellman.)

turned over to Mr. Saraga by Mr. Levy for additional merchandise to be bought for Mr. Olender in August of 1945. The cash was not received by Mr. Olender, but Mr. Levy, after making this sale, kept the cash or the proceeds. However, he received the \$7,000, and that was turned over to Mr. Saraga. That is recorded in the books.

Q. Have you Mr. Saraga's books?

A. No, I have Mr. Olender's books, sir.

Q. Will you find that transaction in Mr. Saraga's books?

A. Yes (Examining Saraga's books). On page 84 under date of August 1, 1945, there is an entry cash receipts from Al Levy for \$7,000.09.

Mr. Lewis: Could I show those entries to the jury, your Honor, and let them examine them? (Passed to the jury.)

Q. (By Mr. Lewis): And now——

A. I might explain this cash receipts record. When the entry was made to cash received the offsetting credit for the debit to cash, the credit was to accounts receivable, [624] indicating that Mr. Levy had purchased this amount of merchandise and it was owing and the \$7,000 was in payment for the amount due from L. Levy.

Q. Now take the next two items on your chart, left hand corner, the left hand side, \$7,725.

A. Well, the \$7,000——

Q. I want to show you United States Exhibit number 41. Maybe this will help to explain it.

A. This is a check from M. Saraga dated No-

(Testimony of Roland D. Hellman.)

venber 15, 1945, made payable to the order of the Army and Navy Store in the amount of \$7,725.

Q. Now, is there any part of that check that appears in the books of Mr. Olender?

A. Having previously looked for this item in Mr. Olender's books, I could not locate it.

Q. The \$7,000?

A. The \$7,000, in this store books.

Q. All right, proceeding down to your next—the \$7,725, you have the check there, and it has been testified that that was turned over to Mr. Levy by Mr. Olender for additional merchandise and that Saraga was again unable to deliver the merchandise and he sent a refund check to Mr. Olender, which was deposited to the personal bank account April 5, 1946, and then Saraga sent a new certified check to Mr. Olender and it was deposited in his personal bank account on [625] June 28, 1946. I will show you United States Exhibit number 42. Now I want you to take and look at schedule 2, number 6.

Mr. Drewes: What is schedule 2?

Mr. Lewis: The analysis of the Saraga transaction.

Mr. Drewes: Thank you.

Mr. Lewis: And I would like to have you start now with schedule 2, and I will show you the Defendant's Exhibit O and I would like to have you analyze, starting with that merchandise invoice, Defendant's Exhibit O, 7/31/45, analyze the Saraga account of that invoice and point out also all en-

(Testimony of Roland D. Hellman.)

tries concerning the transaction on the Saraga books and on the defendant's books.

A. The invoice——

Mr. Drewes: If your Honor please, simply in the interest of time, it appears to me that is accumulative evidence and I object to it on that ground. I am under the impression we have gone through this at considerable length. Another witness, you will recall, testified.

Mr. Lewis: Well, your Honor, my only purpose in going through this again is to show that the \$725 out of the \$7,725 check, United States Exhibit number 41, appears and debits the accounts payable in the amount of \$725 under date of November 30, 1945.

Mr. Drewes: My recollection is that evidence has already [626] been offered and is in the record.

The Court: It may be. Do you have anything to add to that?

A. Well, it was possibly to clarify it and show the chain of events, how the \$725 arose and also to point out that the Saraga transactions as being on the books and as it is merely following through, as he says, the other checks, the original checks drawn to Saraga in evidence showing that a total of \$24,500 was paid to Mr. Saraga through Levy and that the invoice which reads for 1,000 suits was changed to read for 951 suits at a total of \$23,775, indicating that if Mr. Olender had paid \$24,500 there would have been a refund of \$725 due from Saraga, which



(Testimony of Roland D. Hellman.)

Saraga did make and add to the other \$7,000, which we were previously talking about, making up the total of \$7,725 that did go into Mr. Olender's personal bank account.

Mr. Lewis: Your Honor, what I wanted to clarify particularly was this check has the wrong statement on it, that it couldn't possibly work out that way, that schedule under \$725 that went into his books, and I might show this to Mr. Drewes. You see, the letters 49 suits at \$25, \$1,225, deposits \$6,500, went in as \$725 and \$7,000 there is what the books referred.

Mr. Drewes: You make your offer, Mr. Lewis.

Q. (By Mr. Lewis): Will you state your analysis as to the [627] Saraga transactions and why from an accounting point of view and from the facts from the books of both Saraga, starting with the invoice, and from Mr. Olender's books, that that check, the notation—the amount is correct—but the notation as to what it was for, why as an accounting point of view that must be incorrect?

A. Inasmuch as Mr. Olender only paid Saraga \$24,500 rather than the amount that is shown on the original invoice of \$25,000, and there were 49 suits that were not delivered, however, the total of the 951 suits that were delivered, the total cost is \$23,775, according to this schedule 2. Now you point out where that appears on Mr. Olender's books.

A. Referring back to schedule 2, item three, there is an entry on July 31, 1945, charging mer-

(Testimony of Roland D. Hellman.)

chandise purchases. It is an entry to merchandise purchases of \$23,775 and setting up a liability, a credit of \$23,775 as owing and then on the same—that was set up as of July 31, the date of the invoice. Now, on July 23, the date that the cashier's checks which had been introduced in evidence were purchased, indicating the cashier's checks drawn for the merchandise—

Q. "C.P. 53"?

A. That is what I have here now.

Q. They are store checks? [628]

A. Those are store checks, made, indicating in the record here of July 23, five checks of \$3,600, totaling \$18,000, and on August 2 one check of \$6,500. These store checks total \$24,500. If we take the \$24,500 that was paid to Mr. Saraga and subtract the corrected amount of the invoice of \$23,775, it would indicate the balance due of that payment, amount refunded to Mr. Olender of \$725. In addition to the \$725 he had the \$7,000 refund coming on schedule 1, which we have previously talked about, making the total amount of the check due from Saraga and the check that was received November 15, of \$7,725.

Q. And that is the check for \$7,725 marked as Exhibit 41?

A. You want that in Mr. Saraga's books, too?

Q. Yes.

A. Mr. Saraga's books under date of October—November 15, check number 2726 was issued to the

(Testimony of Roland D. Hellman.)

Army and Navy Store, Oakland, and noted accounts receivable refund \$7,725.

Q. Then as an accounting matter, what would be your conclusion as to that particular Exhibit 41 as for what the refund was for?

A. Inasmuch as the check describes the refund paid in full of \$7,725, which is the same as Mr. Saraga's books indicate, and that he, Mr. Olender, could not have the \$1,225 refund coming from the 49 suits inasmuch as he [629] hadn't paid the full amount of the invoice of \$25,000—he only paid \$24,500—therefore he could have only had a refund coming of \$725, and inasmuch as the check is in the total amount of \$7,725, \$7,000 would be under the circumstances construed as the deposit rather than 6500, the deposit that Mr. Levy had made and which shows in schedule 1 on the left side, \$7,000 that Mr. Levy had turned over to Mr. Saraga from the proceeds from the 280 suits sold by Levy for Olender.

Mr. Drewes: I would just like to ask this witness upon what records he relied with respect to his last statement that \$7,000 was turned over to Mr. Olender by Mr. Levy. I understood he was comparing Mr. Saraga's books and Mr. Olender's books for the purpose of explaining the \$7,725 receipt by Mr. Olender.

Mr. Lewis: Well, look at the transcript, page 405 or 401, and you will have that.

Mr. Drewes: What records?

Mr. Lewis: From the testimony given that Mr.

(Testimony of Roland D. Hellman.)

Olender permitted Mr. Levy to take the proceeds of 280 suits amounting to \$7,000.

Mr. Drewes: Would you ask the witness, counsel, if he is relying upon the transcript or upon any records of Mr. Saraga or Mr. Olender.

Mr. Lewis: He is correcting the record of Mr. Saraga [630] in that respect.

Mr. Drewes: I wish the question to be propounded to the witness, your Honor.

Mr. Lewis: All right. Read Mr. Drewes' question to the witness.

(Record was read.)

Mr. Lewis: I think the question is in reverse, Mr. Drewes. You mean \$7,000 turned over to Mr. Olender to Mr. Levy.

Mr. Drewes: It went both ways.

Mr. Lewis: It came back from Saraga to Levy, and your Exhibit that you offered in evidence is endorsed Army and Navy Store, Milton Olender, Lewis Levy, by Milton Olender.

Mr. Drewes: I recall.

Mr. Lewis: Is that fair?

Mr. Drewes: Yes.

Mr. Lewis: Your Honor, could we take the recess at this time? I think that is all on this one transaction.

The Court: We will take the afternoon recess, ladies and gentlemen, the same admonition to you not to discuss the case or form an opinion.

(Testimony of Roland D. Hellman.)

I would like to discuss several matters with counsel.

(The following proceedings outside the presence of the jury.) [631]

(Discussion between Court and counsel with reference to a continuance over next Monday; discussion relative to anticipated date of completion of trial.)

The Court: Tell me about this item of \$8,550—"322 suits included inventory December 31, 1945, resulting in understatement cost of goods, on the right hand side of schedule 1. Is the Government in accord with this theory of the accountant?

Mr. Shelton: Your Honor, I think we are definitely not in accord with that. We think that that represents either purchases in 1944, which would be outside the scope of the evidence on understated income or it represents inventory, additional inventory at the close of 1944, which we understand Mr. Lewis definitely stated that at the close of the session of the Court the other day that he was not going to change. We think that on either theory that the \$8,550—I believe that is the right amount—

The Court: That is correct.

Mr. Shelton: —should not go into evidence to impeach the income figures for the year 1945.

The Court: Well, I can't see how—just from an abstraction and not involving any minute accounting—how there is an overstatement of profit of \$8,550 for the year in question.



(Testimony of Roland D. Hellman.)

Mr. Lewis: That is one of the difficulties, [632] your Honor, of the net worth method. It is our contention that the Goodman money, having come out of the books and not being there as of May the 5th, when the affidavit testified to by Judge Friedman, and the statement of the defendant—one said \$75,000, one said in excess of \$70,000—that that money being on its way was additional cash on hand at the year's end 1944.

Now when you take into income in the year 1944, that \$8,550, and do not charge it to purchases during that year, you have understated the cost of purchases by that sum of money which was available in 1944.

Mr. Shelton: If your Honor please, we think that the defense is very definitely mixing up two theories. There is the net worth theory and there is the actual theory of reported and reportable income. In other words, the ordinary specific item theory. Now the testimony, if your Honor please, by the defendant was, as I recall it, that all this merchandise that was bought in the \$20,550 in the eight Goodman checks was delivered prior to the May date. In other words, there can be no question of cash as tied in with the Friedman inventory of the Olender safe deposit box because that money was in inventory, goods or goods sold at that time. I think that Mr. Lewis, in that particular, your Honor, is not on sound ground. Now as to the— [633]

The Court: Just in passing, I will study the matter as the accountant developed the situation,

(Testimony of Roland D. Hellman.)

and I am inclined to agree with counsel for the Government that there is confusion here, that the \$8,550 is not a corresponding overstatement of profit and could not be upon any theory that is applicable in the case.

Now I am open for any arguments that may be persuasive and convincing, but this far I can't follow the theory.

Mr. Hagerty: Well, if your Honor please, yesterday you remember you said how could you take and just throw these things into inventory without a corresponding credit to the capital account. Don't you remember that?

The Court: Well, I remember it precisely.

Mr. Hagerty: Wouldn't that necessarily throw—

The Court: I asked the question of counsel for the reason that credibility is at stake.

Mr. Lewis: That's correct.

The Court: There is no question, the credibility is at stake with the question of the introduction of 342 suits into the inventory, or 322 suits.

Mr. Lewis: That's right.

The Court: The jury may well believe that the 342 suits did not come out of the transaction referred to by the defendant but came out of other purchases. The jury may believe that this transaction affecting Goodman [634] was one that the defendant took unto himself from an accounting viewpoint, and never reflected on the books; that this reflection is an afterthought on his part in order to meet the contention now made by the

(Testimony of Roland D. Hellman.)

Government that the Goodman transaction never hit the books of account at all and that in preparation for the trial this defendant saw on his inventory a suitable explanation and resorted to it.

Now that's open for a jury to debate. It is a question of credibility. That has nothing to do, however, in my humble opinion, with this matter of accounting as such.

When we take the proper theory—322 suits unsold by Levy are allegedly transferred to the store, according to your accounting, his schedule 1. On the basis of \$25 per suit that would result in a figure of \$8,550. Now the accountant contends, and you likewise contend, that there is a corresponding overstatement of profit by \$8,550 because the cost of purchases has never been reflected in your books of account, and, ergo, it follows that therefore there has been an inflation.

Mr. Lewis: Now, we have one——

The Court: At that point we part as a matter of accounting.

Mr. Lewis: That's right. [635]

The Court: We part. Because—well, go ahead.

Mr. Lewis: Well, our contention is, and it will be borne out by our net worth statement, we are not contending here that this particular item in itself constitutes the overstatement we claim in income. We are explaining that that as a matter, bookkeeping matter, is an overstatement, but we are contending also, and more importantly for net worth, as it will be analyzed out, that he had \$20,550

(Testimony of Roland D. Hellman.)

which he purchased cashier's checks for for Goodman in 1944; that he received through sales of those suits \$20,500 or more because we have traced all the sales—they were either made at retail or wholesale, the wholesale sales are definite in amount, the retail sales just appear in the cash register receipts, and that that \$20,500 is available to us in the sense of cash on hand as of December 31, 1944.

The Court: Well, as I understand it, you have 480 suits accounted for either retail or wholesale. You start with a bulk—outside bulk of 822 sailor suits. You sell 280 suits to Levy's for \$7,000, and in addition to that you sell 200 suits at cost in the Lerman transaction. So that gives you 480 suits sold. Where are the other suits?

Mr. Hagerty: 322.

The Court: What? [636]

Mr. Lewis: 342.

Mr. Hagerty: 342 went back in inventory.

The Court: Well, they are in the limbo of some place. I don't know where they are. Where are they?

Mr. Shelton: Your Honor—

The Court: Where are they?

Mr. Hagerty: That is the \$8,550.

The Court: The \$8,550, that goes into the inventory. Were they ever sold?

Mr. Lewis: Yes, they were.

The Court: When, where and under what circumstances?

Mr. Lewis: Well, the accountant testified this

(Testimony of Roland D. Hellman.)

morning when he was talking about the cash sales and this afternoon when I asked him, that under the system as set out by the taxpayer of ringing the cash register and taking off the tape and totaling it up, that during the period of time or during this period of time maybe all of those suits were sold before the end of 1946 or '47.

The Court: We are dealing in conjecture here because you are dealing in a profit, overstatement of profit of \$8,550 here as of a given period of time in 1945. I can't follow your theory, I just can't do it.

Mr. Shelton: And, your Honor, the net worth theory having been resorted to by the Government and it being our basis and we having laid our foundation by showing [637] the inadequacy and incompleteness of the books and records, then it is not open to the defense to rebut it on the specific item basis. [637A] The necessary requirement of the net worth method is that the books and records be inadequate, I think not correct, which we have established, and Mr. Lewis' contention with respect to the purchases seems to me to misfire entirely because these were 1944 purchases and the 1944 was not a prosecution year.

Mr. Lewis: Your Honor——

Mr. Drewes: If your Honor please, may I add this——

The Court: Yes.

Mr. Drewes: ——the \$20,550 assumed by the defendant's theory came out of cash in the vault in



(Testimony of Roland D. Hellman.)

the year 1944 and deliveries were made early in the year 1944. So the very most that that item could represent would be inventory as of the end of 1944. In other words, they were sold in 1944 and converted back into cash or they were on hand at the end of that year. That is all that can be said. They went back into cash or they are still on hand as of that year.

Mr. Lewis: The fallacy of that argument, your Honor, is that the cash came back in 1945 out of those Goodman checks.

The Court: Let me ask the accountant——

A. Those suits——

The Court: You heard our discussion now?

A. Yes. Mr. Drewes said it would represent an inventory item at the end of '44. However, those suits at the end of '44 were still a personal asset. It was not a store asset of Mr. Olender. [638]

The Court: In breaking down the cost, supposing you were to break down the cost now for this defendant, set it up, and you start with the inventory as of the——

A. Beginning of the year.

The Court: ——beginning of the year.

A. That's correct.

The Court: Then what do you do? You start with the inventory at the beginning of the year?

A. That's right.

The Court: All right.

A. And——

The Court: Then what do you do?

A. Add merchandise bought for sale.

(Testimony of Roland D. Hellman.)

The Court: You add merchandise bought for sale?

A. All right. So let's assume an opening inventory of some small round figure——

The Court: Let's call it "X." We will say it is "X" dollars.

A. It is hard to do it with letters. Put down \$10,000.

The Court: All right, put down \$10,000.

A. You will add your purchases. Say you purchase \$20,000.

The Court: That is the cost of the purchase.

A. You add those two together. You have \$30,000. At the end of the year you have \$15,000 inventory.

The Court: All right, \$15,000 inventory. [639]

A. Now in determining your net income you subtract the purchases. You have cost of sales there, you have an inventory of \$15,000. You subtract that from the thirty.

The Court: Right.

A. You have another \$15.

The Court: That is \$15,000.

A. That represents the cost of goods sold for the year.

The Court: That's right.

A. That is subtracted from the gross sales.

The Court: Right.

A. Arriving at the gross profit.

The Court: Yes.

A. Now these——

(Testimony of Roland D. Hellman.)

The Court: There we agree. We agree on that principle.

A. That's right.

The Court: All right. Now apply the principle to the facts here.

A. We contend that the profit was overstated for 1945, for this reason, the items which were on hand at the end of 1944, the suits down in the basement——

The Court: Now let's agree on our premises. When did these suits come into the house from your viewpoint?

A. As far as an accounting viewpoint, they were never reflected on the books until they were taken into inventory at the end of '45. [640]

The Court: At the end of '45?

A. That is correct.

The Court: That is on the inventory in evidence?

A. That's right.

The Court: All right——

A. Now at the end of '44 these suits were a personal asset, now on the store books of Mr. Olender, just as any cash or anything else, they were sitting in the basement. They were not on the books. They were not reflected in the books. Now at the end of 1945, as testified, there were 322 suits left, meaning that he had sold 20 of the 342. Then in taking his inventory at the end of 1945 these suits are added to the value of other merchandise on hand. Now through a bookkeeping error in not recording a purchase and giving Mr. Olender proper credit in his

(Testimony of Roland D. Hellman.)

capital account at the end of '45, it resulted in the inventory, as those figures you have there—if you will just add \$8500 to the closing inventory figure—this little example that you have in front of you—

The Court: I understand. I follow you.

A. —if you will add the \$8500 to that, you would have only the cost of goods sold of \$6500. Subtract the \$8500 from \$15,000. Then if your cost of goods sold were only \$6500, you subtract that from your gross sales and your profit is going to be overstated by \$8500. [641]

Mr. Drewes: If your Honor please—

A. I can diagram that on the board for the jury, if you think it will simplify it.

Mr. Drewes: I wonder if Mr. Mytinger, the technical adviser, might just state the Government's theory for the edification of the Court now. Would that be proper?

The Court: Yes.

Mr. Drewes: Mr. Mytinger, would you explain our view on the matter to the Court?

Mr. Mytinger: Well, I think, your Honor, it sums up to this. They are attempting to separate personal transactions from store transactions. I believe there is no denying that it was \$20,550 that went out in 1944. I think it has been assumed that it went out for sailor suits. There is no evidence, however, how many of those suits were received or sold in 1944 nor how many remained on hand at the end of 1944. However, if there is any inclusion on the records, the business records for the purchases,

(Testimony of Roland D. Hellman.)

it would certainly be in 1944, unless the man is in two separate businesses, and I believe there is no evidence of that.

I think what few transactions were put on the business records were put on the regular business records, the same business.

As you pointed out, I believe, or someone pointed out, there is likewise no item in the closing inventory at the end [642] of 1945 which can be identified as having any relation to this picture.

The Court: That is the observation that I think I made.

Mr. Mytinger: That's right. That is absolutely right.

Mr. Lewis: Your Honor, that, in my opinion, gets us back to the credibility of the witness. He testified that he did place them in the inventory, and if the jury believes him, well and good. If they don't that's it.

Mr. Drewes: That is perfectly true, and there is one further aspect of the case——

The Court: You accept the statement of counsel, that if the jury believes that these items of 342 suits relate to the Goodman transaction and were in truth and in fact part and parcel thereof, that then the jury may consider that there has been an overstatement of profit in the amount of \$8550? Do you agree on that theory?

Mr. Drewes: I am going to refer that to Mr. Mytinger. That is a little too much for me to grasp at one moment.



(Testimony of Roland D. Hellman.)

The Court: In short, does it come down to the question of credibility?

Mr. Mytinger: Yes——

Mr. Lewis: That then reverts to the same thing, as far as the net income is concerned——

Mr. Mytinger: Actually under the facts as thus far known, if such suits did exist at the beginning of 1945 unsold, [643] your understatement is not \$8550, but \$20,500.

Mr. Lewis: Well, that in essence is the way we are working it out. We do that through our net worth by—this is an example of what happened—but we contend that at the end of 1944, it was testified that he didn't run them into inventory because he wanted to sell them wholesale if he could because of the size situation, and so forth. Now we contend that in essence the \$20,550 that started with the Goodman checks in January and were out of the box by the time the count was made was available through checks and through merchandise to raise his net worth at the end of 1944.

Mr. Mytinger: Mr. Lewis, can we eliminate the checks now? There is no question they went out in January, February, something like that, and were cashed.

Mr. Lewis: Well, but he still had an asset, the money due from Saraga, for clothes that he received.

The Court: I assume then the question is not one for the Court but for, in the final analysis, one for the jury with respect to credibility in the light of the testimony that you may offer through your

(Testimony of Roland D. Hellman.)

expert, and you may take the stand and state your contention here, and I will then charge the jury that the matter rests on the question of the credibility of this witness.

Mr. Hagerty: Yes.

Mr. Lewis: Yes. [644]

The Court: I am trying to refine it. I may be incorrect now. I am open to argument. Is it a matter of law for me to rule on or is it a matter of fact for the jury?

Mr. Shelton: Your Honor, I think it is a matter of law on the admitted facts if there was anything it was inventory at the end of '44. It couldn't have been anything but inventory, and if it was inventory then—and the defense is trying to do just exactly what Mr. Lewis told the Court he wasn't doing, impeaching the closing 1944 inventory, if these suits were down in the basement, if your Honor please, as contended by the defendant, they were a part of inventory, and they were no less inventory than if they had been upstairs on the first floor. Inventory is not what the books show. Inventory is a fact. And if these were anything at all, they were inventory at the end of 1944.

The Court: Well now, here, the 342 suits appear on the inventory.

Mr. Shelton: But we don't know whether they are the same suits.

A. It's a year later.

The Court: You gentlemen considered those suits in connection with your stipulation, is that right?

(Testimony of Roland D. Hellman.)

Mr. Shelton: We took the stipulation on the inventory from the defendant's books.

The Court: As I understand it, the figure of \$85,011.26 [645] was the inventory figure stipulated by you? Now, if that had been considered by the Government, as well as by defense counsel, it seems to me that the whole effect of this transaction is an attempt to impeach the integrity of that figure, if you consider it as an opening inventory as of—or the close of business 1944.

Mr. Shelton: It is an attempt further, if your Honor please, by my friend, Mr. Lewis, to get in by the back door and change this inventory figure when he stated to your Honor on the record that he was not going to attack that closing inventory as to 12/31/44.

Mr. Lewis: No.

The Court: May I have, Mr. Magee, the inventory of 12/31/44, please?

Mr. Shelton: A comparison will show, your Honor, that the stipulated inventory is the same as those on the returns. I believe that is right.

Mr. Lewis: That's right.

The Court: Will you check that, please, in the stipulation. May I have the stipulation?

Mr. Shelton: Exhibits 1 and 2, Mr. Magee, should show those inventories. The Court would like to see those.

The Court: Here it is, closing inventory, \$85,011.26.

A. These are in reference to the sailor suits'

(Testimony of Roland D. Hellman.)

inventory? There might be a note—is there a note, “sailor suits,” or [646] “suit inventory” on the page?

The Court: The next to the last page——

A. That is the end of '45. Do you want to look at the beginning of '45 to see if——

The Court: Can you find this for me (to witness).

Mr. Drewes: Is it the 322 suits that you are looking for, your Honor?

The Court: Yes.

A. This is the end of '46 showing that his normal inventory is down here to only 44 suits.

Mr. Drewes: It is 1/12/46, toward the end, as I recall.

Mr. Hagerty: About page 45, I believe.

Mr. Drewes: I am sure I can put my finger on it.

The Court: Now let us analyze this from the standpoint of accounting—I may be incorrect—on the inventory marked 1/1/46—January 1st, 1946—that is the end of 1945.

Mr. Drewes: December 31, 1945.

The Court: Correct. That was taken by the defendant in his own handwriting, under “miscellaneous items, basement No. 1, 322 serge sails suits,” and there is a mark in here in pencil, “75 upstairs,” which is somewhat in conflict with the defendant’s testimony that everything was downstairs. \$24.50 is the cost price per unit and extension of [647] \$789.

Now in arriving, Mr. Accountant, at the cost of

(Testimony of Roland D. Hellman.)

sales in your books, will you turn to your ledger and refer to the figure \$83,394.64—will you get that for me—\$83,394.64? What is the profit shown for that year here?

A. On that basis?

The Court: On this basis.

A. On that basis the profit—

(Thereupon followed inaudible discussion between the Court and the witness.)

The Court: Now, is it not a fact that the 322 serge suits, and the cost thereof, had been reflected in the profit and loss as we reviewed the books?

A. They had been reflected in the profit.

The Court: All right. If we reflected them again upon the theory of the defense, on the basis of 342 suits at \$25 rather than \$24.50, aren't we duplicating the situation?

A. No, we are saying that these purchases should have been increased. Nothing was ever put on the books to indicate the purchase of that \$8500 worth of merchandise.

The Court: Here on the books there—

A. —as an inventory item. An inventory item is something that you take an inventory. You count it and make a journal entry. It doesn't come through your cash record.

The Court: All right.

Mr. Shelton: But the transaction occurred in '44, Mr. [648] Accountaint. That is the crux of the matter, that these goods were actually bought in '44.



(Testimony of Roland D. Hellman.)

A. And they were a wholesale item, they were in the inventory.

Mr. Shelton: That is immaterial. It was——

A. He was not mixing them in his retail store.

Mr. Drewes: It is a proprietorship, your Honor. There is no distinction between his business and himself. He bought the suits.

The Court: They were bought in '44.

Mr. Drewes: They are in inventory in '44. They can't be anything else.

A. They weren't included at the end of the '44 inventory.

Mr. Shelton: It is a question of fact and not how the entries were made, and they were admittedly bought in '44.

Mr. Hagerty: That brings it back down to our original question, it is a question of credibility.

Mr. Drewes: No, it is not.

Mr. Hagerty: It is a question for the jury.

The Court: Bring the jury in and we will excuse them for the day. I think it is vital that we rationalize this matter. I still think the Government is correct in its contention here. You claim, Mr. Shelton, that it resolves itself into a matter of law.

Mr. Shelton: Yes, your Honor, we think it is a matter [649] of law that these goods were inventory even under the defendant's basis. Now our contention is we don't know whether the defendant's testimony is true or not. We think it may not be true, but assuming for the purposes of discussion that the defendant's testimony is true, we say as a

(Testimony of Roland D. Hellman.)

matter of law the suits that were in the basement at the close of '44 were part of his inventory as much as those upstairs, and inventory does not depend on whether it is recorded on the records. It is a matter of fact.

(The following proceedings were had in the presence of the jury:)

The Court: Ladies and gentlemen, it has reached an approximation of our usual adjournment hour at four o'clock, and I have agreed with counsel there is no purpose in keeping you here any longer. Counsel and Court have been going over some matters of law that pertain more or less to the Court's view rather than the jury's, and also I might advise the jury that by stipulation of counsel after we adjourn on Friday, tomorrow being Friday, we will run all day tomorrow, Friday, we will adjourn at four o'clock, and then we will not resume the case until the following Tuesday, leaving Monday free for the jury to attend to your own business and social matters. The case is running a little longer than we anticipated. It takes time in these matters.

Accordingly I will discharge the jury for the afternoon [650] and request you to return tomorrow at ten o'clock, with the same admonition, not to discuss the case nor form an opinion until the matter is submitted to you. You may now retire.

(The following proceedings were had outside the presence of the jury:)

(Testimony of Roland D. Hellman.)

The Court: Well, I think we have discussed this informally for the edification of the Court, and I assume that at the proper time the Government witness will take the stand and state the Government's theory in connection with this.

Mr. Drewes: He will.

The Court: At that juncture the matter will resolve itself into a matter of law or may prove to be a question to be submitted to the jury, which I will resolve after I hear all of the testimony.

Now, here is 12/31/44 merchandise inventory, \$85,011.26; 12/31/45, \$83,394.64; and 12/31/46, \$57,449.59. These figures were adopted from the inventory. When was the stipulation entered into, in point of time?

Mr. Drewes: Friday before the trial. Last Friday.

A. The inventory at the end of '44 only contained 102 sailor suits. I wanted to point that out to you, the inventory at the end of '44. That \$85,011.26 only included 102 sailor suits.

Mr. Shelton: Mr. Hellman, can you speak a little louder [651] so you can be heard?

The Court: He said at the end of 1944 the inventory only contained or referred to 102 sailor suits.

A. That's right.

The Court: Well, is it not a correct statement, counsel for the defendant, that if the Court allows this item to be considered by the jury as it now is posed before the Court, that it will impeach the

(Testimony of Roland D. Hellman.)

integrity of the items referred to in the stipulation?

Mr. Lewis: No. I do not think it does, your Honor. The witness testified he had not placed them in the inventory, that they were not merchantable goods as far as he was concerned. He was trying to dispose of them at wholesale.

The Court: Well, we come right down to Mr. Shelton's argument or the other gentleman, the consultant, the specialist, that you can't consider this man as having a dual personality from an accounting viewpoint. He can't be a Jekyll and Hyde, so to speak. [652]

Mr. Lewis: Well, your Honor, I believe that you can. Many merchants get undesirable merchandise and don't include it in their inventory; they are trying to return it. The testimony was he tried to get Levy to get Saraga to take it back. He wouldn't do it, and so he just put it aside. It is an item outside of his inventory. I was brought up in the merchandise business as a boy. In the first World War my father had run a store. My brother's still in business. Many a time you order stuff and there is an argument whether or not you are going to include it in inventory; until that is determined you do not include it in inventory, if you want to return the merchandise.

Mr. Shelton: Your Honor, I think that is entirely a red herring in this case. The defense contention is that this inventory had value. If it had no value, if it was zero value inventory, then in the usual system of inventory it would be inventoried

(Testimony of Roland D. Hellman.)

at zero, and my friend Mr. Lewis is again raising a red herring.

A. It would be inventoried at zero, but you would have taken the usual cost of \$8,500 on your books beforehand.

Mr. Shelton: In 1944, but not in 1945, Mr. Hellman.

Mr. Lewis: Well, as a matter of fact, it did not come out of the business account. It came out of his personal funds. [653]

Mr. Shelton: That again is immaterial, because the question is what assets of all kinds, both business and personal, did the defendant have as of 12/31/44. Whether it came initially from business or personal assets is immaterial. The question is, what assets did he have as of December 31, 1944?

A. The stipulation covered the investment per the books. This is material that was not in the books.

Mr. Shelton: The stipulation adopted the books, but it uses the term "inventory."

The Court: In the final analysis it decreases the profit \$8,550 as related.

Mr. Lewis: Well, your Honor, in the final analysis it does more than that, because when he received the \$5,000 from Mr. Lerman—what year was that?

A. 1945.

Mr. Lewis: —in 1945, and when he received the \$7,725 returned by check, they are saying that it is income in 1945 because it appears there.

Mr. Shelton: No, we are using the net worth



(Testimony of Roland D. Hellman.)

method, Mr. Lewis. We don't use these individual transactions, your Honor, to determine the income. We use the net worth method. And these Lerman checks and the testimony with respect to the Lerman checks was offered on wilfulness and is partial corroboration, but the Government's theory [654] of understatement of income is the net worth, and despite your basis——

Mr. Drewes: We don't admit that the Lerman transactions and the Saraga transactions concerned the Goodman suits. That is the defense's story.

Mr. Hagerty: Well, it all comes back to——

Mr. Drewes: Those were sales in '45, a year and a half after the record shows the Goodman suits were purchased.

Mr. Hagerty: So it is a matter of credibility again. It is a matter for the jury to resolve.

Mr. Shelton: Your Honor——

Mr. Drewes: Your Honor mentioned a moment ago that the effect is to understate profit. That is, of course, on Mr. Hellman's theory that they are picked up in '45 as purchases, whereas the record shows conclusively they were picked up in '44.

Mr. Shelton: And the record——

A. It picked up——

Mr. Drewes: They were purchased in '44.

Mr. Lewis: They were purchased in '44, but they were not picked up on the purchases of the—— on the books. They were purchased with his funds, separated from the business books, and they were held in suspense. That would have been a suspense

(Testimony of Roland D. Hellman.)

account, if he wasn't going to retail them, and he could have suspended it that way. I admit [655] that the proper way to have handled it would have been to have made a suspense account, non-useable goods or something else. But he didn't do that. And, as your Honor knows fully well, everybody doesn't know all these fancy rules of accounting. If he wasn't going to use those suits, he would naturally keep them out of his inventory until he had determined if he could dispose of them at wholesale.

Mr. Shelton: Your Honor, there is nothing fancy about this. It is just elementary that your inventory includes everything that you have got. It is immaterial whether it is all recorded or not. The inventory is for all that a man has got. Now if Mr. Olender had been carrying on a corporation, there might be some reason for separating personal assets and corporation assets, but here you have a man engaged in an individually owned business, operating only under a trade name, and there is no reason in God's earth to distinguish his personal assets from the business assets, and this is just an attempt by the defense to impeach the stipulation after Mr. Lewis has clearly stated he had no such intention.

A. How many books have you ever seen where your business assets and personal assets are combined?

Mr. Shelton: That is immaterial, Mr. Hellman.

(Testimony of Roland D. Hellman.)

The question is, it is a question of fact, and not how records are kept. [656]

Mr. Drewes: I tried such a case two weeks ago, U. S. against Port.

A. Where the assets were combined on the books, the personal assets?

Mr. Drewes: Yes.

A. A case where his personal assets were in excess of his business assets?

Mr. Drewes: I think we have stated our position, your Honor.

The Court: I think so.

Mr. Drewes: He had inventory or cash on hand in 1944. That is perfectly clear.

The Court: I have the thing pretty well in mind. All right, gentlemen.

This final item of \$7,725, it got into the capital account, did it, the Saraga item?

A. We didn't complete that.

The Court: We are up to that point, are we?

A. That's right.

The Court: All right.

Was it ever claimed in any of the conferences leading up to the stipulation, gentlemen, and the figures shown in the inventory for 1944, '45 and '46, that this precise item on the inventory in question referred to as 322 sailor suits referred to the Goodman transaction? [657]

Mr. Shelton: No, your Honor; it was never claimed. It came as a surprise to the Government

(Testimony of Roland D. Hellman.)

at the time of trial that this line of defense was adopted at all.

The Court: It was never claimed in conference? Never claimed at any of the conferences with the gentlemen for the defense?

Mr. Lewis: Your Honor, I think I made that claim to Mr. Shelton, not in these terms. I made the claim the \$20,550, that the Goodman checks were available to the defendant at the end of 1944. Now, we didn't go into the details of whether it was in inventory or not. Conferences were very brief on this matter, your Honor, because——

The Court: There must have been something relating to the stipulation, because it is a very formal——

Mr. Lewis: We just went down—they took the inventory all by the returns and these items, and wherever we agreed with them we did it largely for the convenience of witnesses, and this coming right off the books, we agreed to, but I certainly, because when I held my conference—I came into this case very late, and there were two sets of counsel before me in the matter, and as the year '45 was running out Mr. Shelton wasn't as courteous as usual and I got into the case for about ten days and he had set a conference date and I asked him to postpone it and he was kind enough to do it [658] for 24 hours, but he said he had to get along with it.

Mr. Shelton: Well, it was the year '44, your Honor, and the situation was that we had arranged a conference and held a conference with counsel

(Testimony of Roland D. Hellman.)

prior to Mr. Lewis and the other counsel came to the conferences, and I think Mr. Lewis knows, and said, "We are going to have to—we think we are going to have to get out of the case." So they got out of the case in the year '44, just as the year was about to run. The thing had run out quite a long time with the other counsel. I didn't mean not to be fully courteous as usual to Mr. Lewis, but that—just one more thing, Mr. Lewis—but in connection with the \$20,550, I think Mr. Lewis will bear me out that at the time the conference was held in our office consideration was also being given to the year 1944, and that his contention with respect to those checks was made with respect to the year '44 and as the cash item and not as an inventory item.

Mr. Lewis: That is correct, your Honor. I contended that as a net worth basis this \$20,550 was available to this man through all the year.

I didn't mean that you were not courteous. I meant that you had your reasons for not—for rushing it.

The Court: All right. We will adjourn for the day.

(Thereupon the adjournment was taken until 10 o'clock Friday, September 26, 1952.) [659]



Friday, September 26, 1952—10:00 A.M.

The Clerk: United States of America vs. Olender on trial.

Mr. Hagerty: At this time, may it please the Court, I have requested permission to put a short witness on out of order.

The Court: No objection?

Mr. Drewes: No objection.

Mr. Hagerty: Would you take the stand, Mr. Terrana?

**MIKE TERRANA**

called on behalf of the defendant; sworn.

The Clerk: Please state your name, your address and your occupation to the Court and to the jury.

A. My name is Mike Terrana.

Q. Spell your last name, please.

A. T-e-r-r-a-n-a.

Q. Your address? A. 1030 Broadway.

Q. San Francisco or Oakland?

A. Oakland.

Q. And your occupation?

A. Tailor. [660]

Direct Examination

By Mr. Hagerty:

Q. Mr. Terrana, you have said that you are a tailor in the City of Oakland? A. Yes.

Q. Where is your location?

A. 1030 Broadway, Oakland.

(Testimony of Mike Terrana.)

Q. 1030 Broadway. Is that in the same building as the Army & Navy Store?      A. Yes.

Q. The store owned by the defendant, Mr. Olender?      A. Yes.

Q. Do you know Mr. Olender?      A. Yes.

Q. How long have you known him?

A. Oh, since 1942.

Q. 1942. Were you engaged in the tailor business at that time?

A. No, I was working for the old man, Bernstein, when I met him. He used to bring in work over there, a pair of pants, you know, or something, to be done, and that is where I met him.

Q. Directing your attention to the years 1945 and '46, were you engaged in tailoring work in Oakland?      A. Yes.

Q. Did you have your own location? [661]

A. Yes.

Q. Where was that?

A. On 10th Street between Broadway and Franklin Street in Oakland.

Q. In the course of your operations did you make adjustments or alterations for service men in uniform?      A. Yes.

Q. Did you ever work directly for Mr. Olender?

A. No, sir.

Q. Did you ever receive business from Mr. Olender's store?      A. Yes.

Q. Would you describe the nature, the type of business that you received?      A. Navy work.

Q. Describe it to the ladies and gentlemen.

(Testimony of Mike Terrana.)

A. I was doing alterations on Navy uniforms.

Q. Drawing upon your experience and the work you have done on Navy uniforms, what size would you say the average sailor is on the West Coast?

A. Oh, from 35 to 38.

Q. So most of your work then was adjusting or altering uniforms to fit that size man; is that true?

A. Yes.

Q. Now directing your attention to the year 1946, did you do much alteration work of that nature which originated from [662] the store of Mr. Olender?

A. I did quite a bit of his work, oversize.

Q. Would you describe to his Honor and the ladies and gentlemen of the jury the type of work you were doing then?

A. Well, the average sailor is a little guy and he had oversize, big size uniforms, so that—

Q. “He had”—you mean Mr. Olender?

A. Mr. Olender had big sizes, and he had a salesman over there, Big John. He say, “Mike, can you fix this guy?” I tell him, “Oh, well, get him in the dressing room. Put it on and I will see what I can do for them.”

Some of those kids are so anxious to have it done. So we cut it down to fit them.

Q. Do you know of your own knowledge whether there was a large demand for uniforms in the year 1946?

A. A large demand?

Q. Yes, was there a big demand?

A. For uniforms—yes, they couldn't be got.

(Testimony of Mike Terrana.)

They couldn't get them. Nobody could get any uniforms.

Q. Do you know why that was, I mean why the demand?

A. Well, all them kids were coming back from the war, tell everybody they wanted tailor-mades.

Q. In other words, when they returned from overseas they wanted a new uniform?

A. They wanted a new uniform. Everybody wanted [663] tailor-mades.

Q. They were all going home and they wanted to look neat?

A. They wanted to dress up neat.

Q. And as a result it was difficult to obtain supplies; is that right?      A. Yes.

Q. At the present time where are you located?

A. 1030 Broadway.

Q. And that is the same building that the Army & Navy Store is in?

A. The same building, yes.

Q. Does Mr. Olender have a tailor in his business?

A. No, sir; he can't have a tailor in his business. Neither can I sell uniforms. I got it in the lease, black and white.

Q. In other words, the landlord does not permit the tenants to compete with each other?

A. That's right.

Mr. Hagerty: You may cross-examine.

Mr. Drewes: No questions.

The Witness: Thank you.

(Testimony of Mike Terrana.)

Mr. Hagerty: I might ask you one other question, Mr. Terrana. Were there other tailor shops in that vicinity during the years 1945 and '46?

A. Yes.

Q. Could you give us the names of some of them? [664]

A. Well, across the street from me was Navy Joe, and, oh, between Broadway and Washington there was Louie Klein, Tenth Street Cleaner—he was doing Navy work also, and Bernstein—he was in the same building as Mr. Olender, T. D. Tailor Shop. They were all in one block.

Mr. Hagerty: Thank you, Mr. Terrana. No other questions.

The Court: The witness is excused?

Mr. Drewes: He is excused.

The Court: You are excused.

(Witness excused.)

#### ROLAND D. HELLMAN

resumed the stand and, having been previously duly sworn, testified further as follows:

The Clerk: Mr. Hellman, would you please restate your name for the record?

A. Roland Hellman—H-e-l-l-m-a-n.

#### Direct Examination

(Resumed)

By Mr. Lewis:

Q. I hand you herewith, Mr. Hellman, the Defendant's Exhibits K, I, J, H and L, and U. S.



(Testimony of Roland D. Hellman.)

Exhibits 40, 40-A and B, also the United States Exhibit No. 41, which is the Saraga check for \$7725.

Have you your chart there before you?

A. Schedule 1? [665]

Q. Yes. A. Yes, I have Schedule 1.

Mr. Lewis: I think yesterday afternoon, your Honor, right before we recessed, we were at the point of the \$7725 check, and I would like to have Mr. Hellman trace—continue with the chart at the point where that check comes into it.

A. In the middle of Schedule 1 on the left side we find the item:

“Refund sent to M. Olender—November, 1945. Saraga unable to furnish merchandise ordered, \$7,000.”

That, of course, follows down from above, which we have covered the ground there, as this check having been received.

And we will go across the page to the right-hand side and find an item of \$725, which by referring above the total of \$725 we will start there with \$18,000 which has been shown was checks drawn by M. Olender, five checks, in the amount of \$3600 each made to Saraga.

Below that \$6500. Mr. Olender drew a check of \$6500 to Saraga.

He paid Mr. Saraga a total of \$24,500.

However, only \$23,775 worth of merchandise was shipped by Mr. Saraga to Mr. Olender.

(Testimony of Roland D. Hellman.)

\$23,775 we identified yesterday on the books as the [666] purchase.

The difference of \$725 was a refund due to Mr. Olender out of the \$24,500 that had been paid to Mr. Saraga.

Mr. Saraga combined this \$725, and we follow the arrows over to the left, combine the \$725 to the \$7,000 which had previously been given to Mr. Saraga for merchandise which he could not deliver. He therefore drew one check in the amount of \$7,725, dated November 15, 1945, to pay Mr. Olender the money due him for merchandise that he could not deliver. This check was endorsed "Army and Navy Store, by M. Olender," and given to Mr. Leavy to attempt to purchase more merchandise.

This check had never gone through Mr. Olender's bank account.

Following down—yesterday this \$7,725 check was pointed out on the books of Mr. Saraga, which is in U.S. Exhibit 40-B. We showed where that money was drawn to Mr. Saraga's bank account.

Now the next item below \$7,725, it appears again for the second time, the same amount. Now that was a check or proceeds thereof given to Saraga by Leavy for additional—this check that he gave to Mr. Saraga—and that is in Mr. Saraga's books. There is an item here on Mr. Saraga's books, page 50, of this "Cash receipts" showing an item on March 19, 1946, marked "Exchange account, [667] \$7,724."

I may explain, the \$7,725 check was reduced on

(Testimony of Roland D. Hellman.)

account of a bank collection charge. The bank had charged a dollar, and the amount was reduced by one dollar.

Now this exchange account general item, posted to such an account as that would be just as it indicates, exchange, that the merchandise—that for some reason it wasn't posted to a regular accounts receivable for the purpose of merchandise and it was just an exchange check, it was a reduction of the cash in Mr. Saraga's bank. So we describe that as "Check or proceeds thereof given to Saraga by Leavy for additional merchandise," and Saraga's books indicating receiving it.

Now this check, therefore, was not in the possession of Mr. Olender at the end of 1944.

Mr. Shelton: Objected to, if your Honor please; I believe there is no evidence in the record to support that, and if the witness has grounds for that statement I would ask that he set them forth.

The Court: Whatever basis you have, Mr. Witness, you might state.

A. Well, the check of \$7,725—let me correct myself first. I said this check was not in the hands at the end of '44. I meant the year '45. This check was drawn November 15, 1945, to the Army & Navy Store, which is identified as Mr. Olender's business. It was never deposited [668] in Mr. Olender's bank account and therefore it does not appear on his books.

Either this check was cashed and the proceeds of

(Testimony of Roland D. Hellman.)

either cash or this check itself was either in Mr. Olender's hands or Mr. Leavy's hands.

Mr. Shelton: If your Honor please, I would like to object and ask that that be stricken unless the witness has himself examined that check.

Have you examined the check, Mr. Hellman, about which you speak?

A. This check here?

Mr. Shelton: The check for \$7,725?

A. Yes, I have.

The Court: Does it have a clearing house endorsement on it?

A. Yes.

The Court: Does it appear to have been cashed?

A. No, it doesn't indicate that—

The Court: Are there any perforations through it at all?

A. Yes—they are not regular—there are some perforations, but it is not a regular cancelled stamp.

Mr. Lewis: If your Honor please, for the record, will you refer to the check by the U. S. Exhibit number?

The Court: You can determine whether it was cashed or [669] not?

Mr. Shelton: Exhibit 41. Your Honor, may I ask the witness if the bank stamp on the back does not show that that was cashed?

The Court: Yes.

A. This one here, you mean?

Q. (By Mr. Shelton): Yes. Doesn't one of the

(Testimony of Roland D. Hellman.)

stamps on the back indicate, Mr. Hellman, that that check was cashed?

A. It was cashed in Oakland, yes.

Mr. Lewis: I think the testimony was, your Honor, that the proceeds of that check was given to Mr. Leavy to get further merchandise, and then he later received——

The Court: Let us have it from the witness, please. One thing at a time.

A. There is an endorsement on the back. Actually the endorsement is Army & Navy Store, by M. Olender, pay to the order of any bank.

Mr. Shelton: So that indicates, Mr. Hellman, that the check was deposited, does it not?

A. Not deposited, no.

Mr. Shelton: Well, it was put through the bank, isn't that——

A. It was put through the bank.

Mr. Shelton: ——isn't that a form of deposit?

A. Not if it was cashed, it is not. [670]

Mr. Shelton: You are quibbling about language?

A. No, I am not quibbling about language, Mr. Shelton. A check can be deposited to a man's store account or it can be cashed and the proceeds can be put in his pocket or given to Mr. Leavy.

Mr. Drewes: Ask him if he knows.

Mr. Shelton: Do you know, Mr. Hellman, what was done with that check?

A. No, I don't. You can't tell from an endorsement on the check what was done unless it was actually cashed.



(Testimony of Roland D. Hellman.)

Mr. Shelton: Now, can you say, Mr. Hellman, it was not deposited?

A. I can, because I have checked Mr. Olender's bank deposits and no such item appears.

Mr. Shelton: If your Honor please, I would like to ask that that be stricken, for this reason: a check may be cashed and the proceeds made available without going through the books, and there is evidence in this case that——

The Court: There isn't any disagreement between your position and that of the witness, as I see it. I may be incorrect. The witness has stated that the check bears the bank endorsement, also bears the endorsement of the Army & Navy Store, by Mr. Olender.

A. That's right.

The Court: The check may have been handled in one or two [671] ways. It may have been taken to the paying teller at the bank upon which—what is the name of the bank, the drawee bank—the bank upon whom the check was drawn?

A. Corn Exchange Bank Trust Company, New York.

The Court: Or it may have been taken to the local bank. What is the name of the local bank?

A. The Bank of America, Oakland.

The Court: The Bank of America, Oakland.

A. The Bank of America, Oakland.

amount of \$7,725 or \$7,724, as it may appear—one dollar being an exchange deduction.

A. That was in a subsequent check.

(Testimony of Roland D. Hellman.)

The Court: Or it may have been deposited in the account. Now this gentleman says he examined the deposit account and it does not appear. The inference may be drawn that the defendant received it in cash and gave it to someone else.

A. Your Honor, if I might point out on this check for November 15th, 1945, which we are talking about and which Mr. Olender endorsed Army & Navy Store, and the proceeds that we are arguing about, whether it was cash or deposit, we have this check drawn by Saraga in June of '46——

Mr. Hagerty: Mr. Hellman, may I suggest that you use the Government exhibit number so we will know?

A. The check I was just speaking about was U. S. Exhibit 41. Now U. S. Exhibit 42, dated June 24, 1946, from Saraga [672] to Lewis Leavy, in the amount of \$7,724, described as repayment in full on advance made, that check was endorsed by Lewis Leavy, re-endorsed by Milton Olender, and that check was deposited in Mr. Olender's commercial bank account for the Army & Navy Store, and the symbols on the back are not the same as the time symbols if the check was cashed.

Q. (By Mr. Lewis): Assume, Mr. Hellman——

Mr. Shelton: Mr. Lewis, would you bear just a minute with me? I understand there may be some evidence in this exhibit bearing on that, if you would bear with me just a minute. We might be able to locate it here.

(Testimony of Roland D. Hellman.)

Mr. Hellman, will you state again the date of that check, if you please?

A. Are you looking for the deposit in Mr. Olender's bank account? On June 28, 1946, you will find a deposit of \$7,724.

Mr. Shelton: Go ahead, Mr. Lewis. I believe we can straighten this out later.

Q. (By Mr. Lewis): Assume the check \$7,725, U. S. Exhibit No. 41, was endorsed by Mr. Olender, the proceeds given to Mr. Leavy. Proceed now with your explanation.

A. We follow down on the left side again, Schedule 1, the second item from the bottom:

“Saraga again unable to deliver merchandise. Sent refund check to M. Olender. Deposited [673] to personal bank account April 5, 1946.”

Which appears in the duplicate copies of the deposits there that they are examining now, and this check was returned by the bank as uncollectible.

Following down, Saraga sent a new certified check to M. Olender, which we have here, U. S. Exhibit No. 42, which was also deposited in his personal account—excuse me, Mr. Shelton. I said that you will find that deposit in there. You will not. That is the commercial account. This \$7,725 went into Mr. Olender's personal bank account.

We can identify that going into his personal, not the store bank account. That is why this schedule is broken down on the left side, “Personal,” and the right side, “Store,” to show that of the original \$20,550 this amount, \$7,725, went back into Mr.

(Testimony of Roland D. Hellman.)

Olender's personal funds, keeping them separate, and the \$13,550, the balance, went into the store. That is why this schedule is divided into two parts, to help trace the personal and the store, which is the way he was handling this account.

Now to show where the \$725—even though that was part of the \$7,725 check, Mr. Olender reimbursed the store for \$725 because it was store money and not personal money.

Mr. Shelton: If your Honor please, I would like to ask to strike the statement that the thirteen thousand and some odd dollars went into the store account. I believe that what [674] the witness has done is to take the total of \$20,550, to subtract the \$7,725 which went into the personal account, and to assume that the remainder went into the store account through merchandise, on the ground that that is not in evidence and that this is an expert testifying only from facts otherwise in evidence. I would like to ask that be stricken.

The Court: That may go out.

Mr. Lewis: I think, your Honor, Mr. Shelton is in error because the \$5,000 of the Lerman transaction is deposited into the store bank account June the 19th, 1945, and the additional investment credited to M. Olender's capital account on the books. You will find that.

Mr. Shelton: If your Honor please, I think Mr. Lewis is starting one step too late. We do not believe that the evidence of the defense has tied in the \$5,000 Lerman item with the original Goodman

(Testimony of Roland D. Hellman.)

transactions involved in the \$20,550, and, in any event, Mr. Hellman testified about a considerably larger amount, thirteen thousand plus.

Mr. Lewis: That is the \$8,550—

The Court: I struck the testimony of the witness with respect to the \$13,550 as an inference not borne out by anything in the record, and accordingly was stricken from the record.

As to the \$5,000 item, we passed that point. [675] Five thousand was credited to capital. However, whether it be the same five thousand emanating from the Lerman transaction, it is a matter of argument.

You may proceed. Counsel, may I suggest to you to proceed with the witness, and the interchange of arguments from time to time are not very helpful. This is not reflecting on you, Mr. Lewis, nor Mr. Shelton, but if we can proceed, let the Government take its position at the proper time on cross-examination unless there be objections before the Court. But with counsel wrangling about these items, it will not be very helpful to us. As a matter of fact, it is rather confusing as we go along.

Mr. Lewis: I appreciate that, your Honor.

The Court: I am not reflecting on you, Mr. Lewis. I am just trying to organize.

Mr. Lewis: I understand.

The Court: Now we are at the \$7,725 item, aren't we?

A. I was referring to Mr. Olender's general journal, U. S. Exhibit J, or Government's Exhibit



(Testimony of Roland D. Hellman.)

—or Exhibit J under date of November 30, 1945, entries made on Mr. Olender's books, a debit to cash—that is a debit for cash received, and a bank charge of one dollar as a debit, and a credit to accounts payable, explained as a refund from Saraga's account, suits not delivered, miscellaneous account.

So the credit was made to accounts payable. [676]

Previously when the \$24,500 worth of checks had been drawn they had been debited to accounts payable, and inasmuch as he received only \$23,775 with the merchandise, that is the only amount of credit that was set up.

Therefore the accounts payable were out of balance by \$725, and it was necessary to make this credit entry to accounts payable so that the Saraga accounts payable was balanced off at zero.

The Court: Who made that entry?

A. The \$725?

The Court: No, who made that journal entry there, the bookkeeper?

A. It is my understanding—Mr. Olender testified that he made no entries in these books, and so it must be presumed the bookkeeper made the entry.

The Court: Who was the bookkeeper at that time?

A. Just from hearing it in Court, it was Vera——

The Defendant: Vera Manger.

The Court: Did you ever talk to her?

A. No, I have never seen her.

(Testimony of Roland D. Hellman.)

The Court: You never interviewed her?

A. No.

Following the last item on Schedule 2, the left side, Saraga sent new certified check to M. Olender, which was also deposited in his personal bank account on June 28, 1946. [677]

Now we show—we have the check itself, U. S. Exhibit 42 in evidence, but this check was received by Milton Olender and marked “Paid,” cleared through the Bank of America, Oakland, on June 29th, 1946, the day after it was deposited.

That can be shown as going into his personal bank account, if it is necessary. I don't have the——

The Court: That did finally find its way into his personal bank account?

A. That was deposited in the personal bank account. As a matter of fact, it went in twice, in April, and the check was returned as uncollectible, and it went back in June.

The Court: When the certified check came in?

A. When the certified check came through, that's right.

Q. (By Mr. Lewis): Now, Mr. Hellman, will you take Defendant's Exhibit N, the inventories, and I want to ask you one or two questions on that. Take the year 1944 and go to the sailor suit item of inventory. Do you find it?

A. You mean January 1st, 1945, the same as December 31, 1944?

(Testimony of Roland D. Hellman.)

Q. Well, that's the——

A. The end of the year '44?

Q. Yes.           A. Yes.

Q. What are the total number of sailor suits shown on that [678] inventory on hand?

A. There are four items described on here, one for 105 sailor suits at \$23, making a total of \$2,415.

The Court: Just a moment. 105 at \$23?

A. That's right. Total \$2,415.'

The Court: That appears under——

A. 105 sailor suits.

The Court: What is the legend in the inventory?

A. It is under "miscellaneous items, sailor suits"——

The Court: Miscellaneous items. All right.

A. ——on page—it was page—it is page 45 of his inventory.

The Court: 45.

A. There are three individual types of suits described here. One marine suit, blue, at \$28; one gray suit gabardine at \$29.50, and one gray suit sheeno at \$10.75.

The Court: We are concerned with sailor suits.

A. That's right.

The Court: The item of \$23.

A. That's right, making a total sailor suit inventory at the end of 1944 of \$2,483.25.

Q. (By Mr. Lewis): Now, will you do the same thing with the inventory for the next year? It is dated January the 1st, 1946, and applies to the end of the year 1945.

(Testimony of Roland D. Hellman.)

A. That's right. That appears under "miscellaneous items, [679] basement No. 1." No page number on the inventory. "322 sailor suits \$7,889."

The Court: That is the extension, \$7,889?

A. That is the extension. Later in pencil was put the figures \$24.50—at \$24.50 each.

The Court: That is the price?

A. Price, and there is a notation "75 upstairs." Presumably indicating the store floor room.

Below that also in pencil—written above that it says "End of B-1"—apparently Basement 1—which it refers to the top of the inventory sheet.

Following that are listed—not immediately following, but down at the bottom of the page, and also in pencil on the left side, an item marked "main floor" and are listed more sailor suits. There are 39 sailor suits at \$24.50.

The Court: On the main floor?

A. That's right.

The Court: 39?

A. 39 serge suits at \$24.50.

The Court: \$24.50?

A. \$955.50.

The Court: All right.

A. 19 gabardine suits——

The Court: Well, gabardine hasn't anything to do with the sailor suits. [680]

A. Yes, it's a type of suit. It's a suit—. Well, I can't testify to that. Whether the gabardine is a sailor suit or a military suit of some sort.

Q. (By Mr. Lewis): Well, will you give us the

(Testimony of Roland D. Hellman.)

total inventory and leave out the gabardine suits?

The Court: I thought we were concerned with the sailor suits.

A. We are.

Mr. Lewis: I say leave out the gabardines.

The Court: We have enough to deal with, plenty to deal with the sailor suits without taking in the gabardines.

A. May I explain, your Honor, why the comparison is being made?

The Court: I would like to——

A. To show that at the end of 19—the inventories at the end of the three years in question here, the end of '45 the inventory is in excess in dollar amount in '45—four times the amount of any other year. Not quite four times 44. In numbers the inventory is three and a half times in excess of the end of '45 than at the end of '44 or '46. Thus under the circumstances making it apparent that there must be some unusual items in this December 31, 1945, inventory to make it so high.

Mr. Drewes: Move to strike that as a conclusion.

The Court: You are drawing instances merely from the arithmetical figures? [681]

A. You do that——

The Court: Without foundation in the record, isn't that true?

A. Except——

The Court: Will you answer that, please? Is that true or not?

A. Drawing an inference?

The Court: Yes.

A. From a mathematical——



(Testimony of Roland D. Hellman.)

The Court: Based upon the arithmetical figures before you?

A. That's right, yes.

The Court: Without any foundation, isn't that true?

A. Other than on testimony presented by Mr. Olender.

The Court: Did you examine the invoice registers for 1944, 1945 and 1946 to determine the number of sailor suits purchased?

A. In totals?

The Court: Yes.

A. No, I didn't. The register——

The Court: Are they available?

A. The invoice registers?

Mr. Lewis: Yes.

The Court: They are available?

A. They are right here. Purchase register. [682]

The Court: Did you examine the invoices themselves?

A. No, sir.

The Court: Are they available?

A. I believe they are, yes, sir. Would you like us to compute the total suits?

The Court: Well, I think at some place in this record, in order to clarify the situation—it is not altogether clear in my mind, and I take it if it isn't clear in my mind it isn't clear in the jury's mind——

Mr. Lewis: If your Honor please——

The Court: Will you pardon me just a moment. I have this thought in mind. It may be adaptable. It may not be.

(Testimony of Roland D. Hellman.)

Mr. Lewis: Yes.

The Court: This thought I have in mind that between the government accountants and the defense counsel, the defendant's accountants, that you take the invoices of the sailor suits purchased in 1944, '45, '46, as reflected by the books and the sales as reflected by the books. For this reason, as it stands now in the record, and if I am incorrect I should like to be corrected, we have 322 sailor suits in 1946 inventory——

A. January 1st, 1946.

The Court: ——January 1st, 1946. 75 marked "upstairs" at an invoice price of \$24.50 and the extension is \$7,889. A. That's correct.

The Court: Thus far in the record the only basis for the [683] assumption or the inference that these 322 sailor suits relate to the Goodman transaction is the testimony of the defendant himself.

Mr. Lewis: That's correct.

Mr. Haggerty: That is true.

The Court: As I view the record.

Mr. Lewis: That's correct.

The Court: Mr. — the government counsel, Mr. Shelton and his colleague, takes the position that the introduction of that figure is one made by the defendant in order to meet a condition confronting him. Hereafter the question of credibility might arise for the jury to determine.

Mr. Lewis: Yes.

The Court: Now it seems to me that in aid of a clarification of the situation the court might direct,

(Testimony of Roland D. Hellman.)

if the records are available, that an analysis be made of the purchases of sailor suits from all sources. That would include Goodman, Serrano—

Mr. Haggerty: Seagoing?

The Court: Whatever trade names there are. Total them, total the sales made in the period 1945, and as a result of that we have a breakdown of the total figures and we can then draw inferences favorably or unfavorably with respect to the introduction of the 322 suits.

Mr. Lewis: Yes, sir. [684]

Mr. Shelton: If your Honor please, I would like to point out one thing in that connection.

The Court: Yes, sir.

Mr. Shelton: Not in any argumentative sense, but it is our understanding of the record that in this case that when suits were brought upstairs and sold the totals would not go into the sales register as such; in other words, they would just go in as cash items, and the information worked up may be defective in that respect, in that sales are not properly accounted for.

The Court: In other words, I am directing on the part of the court that a little interim audit be made, if it hasn't already been made, to aid the court and the jury in a solution of the problem. The matter goes to credibility. The defendant takes the position, he apparently took the inventory—that is, the defendant—that these 322 suits came from Goodman or came out of the Goodman transaction.

Mr. Lewis: That's correct.

(Testimony of Roland D. Hellman.)

The Court: Now with that situation confronting the Court and the jury, I think it fair that the defense, as well as the prosecution, engage in a rationalization of all of the purchases as to sailor suits and the sales, if the records be available. If they are not available, then to report to the Court.

Mr. Lewis: I think they are available, your Honor. [685]

The Court: All right. Breaking purchases down from a standpoint of individuals, that is, Goodman and so forth, and breaking them also down as to the individual purchases made as distinguished from the store purchases.

Mr. Lewis: That's right. I think that will greatly clarify the matter.

The Court: The defendant took the position that after the Goodman purchases he dealt with them individually. That is your position on the record thus far?

Mr. Lewis: That's correct.

The Court: I still maintain the same breakdown.

Mr. Lewis: Yes.

The Court: All right.

Mr. Lewis: Mr. Hellman, assuming that the analysis of the Goodman transactions as set forth on our schedules 1 and 2 here is correct, what is the effect on the net worth of the defendant for 1944 and 1945?

Mr. Shelton: If your Honor please——

The Court: What was that question? Read it, Mr. Reporter.

(Testimony of Roland D. Hellman.)

(Question read by the reporter.)

Mr. Shelton: If your Honor please, if this is designed to elicit—it is a vague question, as some of Mr. Lewis' have been.

The Court: What is that? [686]

Mr. Shelton: If it is designed to elicit a contention that inventory as of the close of the year 1944 was higher than that stipulated to in the stipulation between the parties, the government would object on that ground.

The Court: Is that the intention, Mr. Lewis?

Mr. Lewis: That is the intention.

Mr. Shelton: And in accordance with the position of the government previously stated to the Court, we object to that on two grounds; first, that the stipulation is binding on the parties, and, secondly, that Mr. Lewis stated previously to the Court that he did not intend to impeach the stipulation as to the inventory figures in the case, and on that double ground the government will object to this question.

Mr. Lewis: Your Honor, I think the question is admissible because on our contention we have, as you have stated, two accounts here, the Army and Navy Store and the defendant's personal funds, and we make the assumption that the Goodman transactions during the year 1944 as reflected by the \$20,550 taken from the box as shown in the transcript, page 389, in January, 1944, was not a store transaction, it was from personal funds. The goods were not taken into the store at all until 1945.



(Testimony of Roland D. Hellman.)

Mr. Shelton: I believe, your Honor——

The Court: No matter how you approach the inventory figures, it is not my position to disturb the stipulated [687] figures. I think the stipulated figures were entered into after mature consideration on the part of counsel representing both sides. I will permit testimony with respect to any errors, palpable accounting errors that may have crept in.

Thus far they haven't appeared to me yet. At least in my mind the question of the Goodman sailor suits, as identified in the present inventory, represent a constant figure, whatever it may be, the inventory values reflected there, whether it be at the beginning of '45 or at the end of '45 or '44.

Now you take the position, Mr. Lewis, as I understand you, that you predicate a hypothetical question to this witness——

Mr. Lewis: Yes.

The Court: Repeat the question.

Mr. Lewis: Assume that the Goodman transactions as set forth in our chart, and that the \$20,550 which was testified was taken from the safe deposit box and purchased cashier's checks and given to me for the purpose of getting sailor suits, and not taken out of the store account, and that those sailor suits, 322 suits that wound up in the inventory, the 342 suits that Mr. Olender testified he said he took into the stock of the company, 20 suits were sold, and that the \$7,000 given to Mr. Leavy—or the 280 suits sold by Mr. Leavy for Mr. Olender were not taken into the inventory, but the proceeds

(Testimony of Roland D. Hellman.)

turned over to Mr. Leavy for additional merchandise; and assume that those suits were not sold at a profit; and that in the year 1945 Mr. [688] Olender again gave to Mr. Leavy a total of \$7,725; and assume that the 200 suits sold at cost to Mr. Lerman was added to the investment account of Mr. Olender in the store. I then ask him what effect—and also assume that the \$24,500 payment made by Olender resulted in \$23,775 worth of merchandise which was entered into the inventory, and a refund of \$725 made to the store and put through the books of the store. I now ask him the question: What effect that would have on the net worth of Mr. Olender on December 31, 1944, and December 31, 1945.

Mr. Shelton: It is our understanding of the law, if the Court please, that a hypothetical question must be based on facts in evidence. It can be based on either party's theory but it must have evidence to support each of the constituent parts.

The government feels in this case that Mr. Lewis' hypothetical question—that a number of the parts are not supported by the evidence in the record, that it is an attempt to impeach the stipulation. And on those grounds we object to the question.

Mr. Lewis: I think, your Honor, that the question is correct in the present state of the record. I think Mr. Olender and Mr. Leavy's testimony was that Leavy sold 200 suits at cost for Olender to Lerman. The endorsements on the cashier's checks show that Olender endorsed the check which was made to Leavy. Leavy testified he gave him

(Testimony of Roland D. Hellman.)

that money. And the only [689] remaining problem is what we are going to do with this inventory situation.

Mr. Shelton: If your Honor please, I believe it is clear from the defendant's testimony that his version is that these Goodman suits with the \$20,550 were received in the early part of 1945—certainly before June.

Now at that time that became inventory. If it remained inventory at the end of the year, then it is a part of the inventory like any other, and the defense is not entitled to impeach the stipulation.

If it was converted from inventory into cash, one of two things would have happened to it. Either it would have gone into the defendant's records, his bank accounts, either business or personal, or into other assets and be accounted for in that way, or else it would have gone into personal funds of the defendant.

Now your Honor will recall that the Government has already offered evidence in this case that the defendant gave Mr. Ringo a \$50,000 cash figure for his undeposited cash as of December 31, 1944. The Government therefore strongly feels that this \$20,550 had to be converted into other assets, that the defense's hypothesis on which this question is asked is clearly unsound and not supported by the evidence, and we therefore renew our objection to the question.

Mr. Hagerty: Our position, your Honor, is again it is [690] credibility. Every bit of the evi-

(Testimony of Roland D. Hellman.)

dence, every bit of the substance of that hypothetical question has been sworn to on the stand by the defendant and the witness Leavy and substantiated by various of the Government's exhibits in reference to these checks. We feel that Mr. Shelton is merely arguing on the basis of the evidence. That is a matter to be taken up in argument.

Mr. Drewes: On the contrary, your Honor, as has been stated heretofore there can be no question that the suits were purchased in 1944. In that year they were either inventory or converted into other assets, possibly back into the vault in the form of cash. Therefore any effort——

The Court: Those are matters of inference to be drawn from the record.

Mr. Lewis: Your Honor, I might suggest——

The Court: We have a transaction—. Approaching it now objectively from the Court's viewpoint, the transaction partakes of two phases. According to the defendant's testimony, he swore under oath, he states he held the merchandise, the sailor suits, for a period of time; that they were not the right size; that he sold 200 suits at cost. Well, that was a wash transaction, according to your theory.

Mr. Lewis: That is right.

The Court: There was no profit. It washed itself out.

Mr. Lewis: That is right. [691]

The Court: Then for some reason which the defendant claims was a good reason, he transferred



(Testimony of Roland D. Hellman.)

or included in the inventory 322 suits in the inventory.

Mr. Shelton: At the end of '45.

The Court: At the end of '45. Whether it be '44 or '45. Now up to this very moment and throughout all stages of our analysis of the evidence there is not one bit of evidence in the books that would correlate the 322 suits to the transaction affecting this Goodman or the Goodman Company. Thus far I do not know and I would have to guess, save and except for the defendant's testimony, that 322 suits came from Goodman. Therefore I believe it vital that we have a breakdown to determine the complete analysis of all the sailor suits, No. 1. That is what I suggested this morning. And, secondly, you ask this Court in the face of the evidence thus far elicited to change or impeach the stipulation.

Now, may I have the stipulation, please?

The merchandise inventory: 12-31, 1944, \$85,011.26.

12-31, 1945, \$83,394.64.

12-31-46, \$57,449.59.

Now those figures were collated from the inventories which have been in evidence.

Mr. Lewis: That is correct.

The Court: Those inventories were prepared by the defendant. [692]

Mr. Lewis: That is right.

The Court: And the Government has accepted those figures and they are now in the stipulation.



(Testimony of Roland D. Hellman.)

Mr. Shelton: They appear on the tax returns, if your Honor please.

The Court: And they appear on the returns.

Mr. Lewis: Now, your Honor, I call your attention to the preliminary paragraph of the stipulation about going into sources.

The Court: "Each party shall have the right to show the sources involved in items in this stipulation."

Mr. Shelton: If your Honor please, changing the figures in the inventory, it seems clearly the defense purpose is not explaining sources. There is a difference between explaining sources as the source of cash and in varying the terms of the figure. What the defense is trying to do here, as I understand them, and they haven't indicated otherwise in this colloquy, is to change the figures and to add additional starting inventories as of the beginning of the year '45.

Mr. Hagerty: No, if your Honor please, at the end of that hypothetical question was: Would this make a difference in the net worth? And the net worth is composed of various things besides the inventory, and it involved the putting into the capital of this amount of cash. That is over and above the inventory. [693]

Mr. Shelton: In that case it would show up as cash or other assets, if your Honor please, and I think it also must be deduced from the defendant's own testimony that he does not contend that it was converted to anything else. His unsupported story

(Testimony of Roland D. Hellman.)

is that he put it down in his basement. He didn't include it in the inventory. The defendant didn't tell the story that the defense counsel are now trying to argue, that this might have changed into cash or it might have changed into other assets.

The Court: Well, part of the proceeds went into capital account.

Mr. Shelton: Well, maybe part, but that was in——

The Court: \$5,000 went into capital account.

Mr. Shelton: That was in '45, I think, your Honor, and I was addressing myself, your Honor, to the end of '44. What they are trying to do here is to increase the defendant's assets at the end of '44 and thus cut income, and I submit that the defendant's testimony does not support the defense counsel contention that as of the end of '44, which seems to be the crucial time on this issue, that the Goodman suits had been converted into other assets.

The Court: Well, is or is not that a factual problem for the Jury or is it a matter of law for the Court?

Mr. Shelton: We think it is a matter of law, your Honor, on the defendant's own story. You take the defendant's [694] own story and apply the rules of law to it, and it seems to the Government that on the rules of law which are applicable on the defendant's own story they are not entitled to increase the inventory as of the end of '44 contrary to the stipulation.

Mr. Hagerty: We feel it is a definite conflict

(Testimony of Roland D. Hellman.)

and a question of fact, your Honor. It is a matter of the credibility to the jury.

The Court: Well, the Jury may retire for the morning recess. The same admonition, ladies and gentlemen, not to discuss the case under any circumstances, nor to discuss the case or form an opinion until it is submitted to you.

(The following proceedings were had out of the presence of the Jury:)

The Court: What is your position on this matter, the net worth at the end of '44 would be increased by \$20,550?

A. The net worth at the end of '44 would be increased by \$20,550. In other words, all of those items, the \$5,000, would have been—

The Court: \$5,000—when you speak of five thousand, tell me what the five thousand is. Is it the five that went into the capital account?

A. That's right.

The Court: I can't, you know—after all we are dealing in figures here. When you speak of five thousand, there are several five thousands in the record. Five thousand [695] in capital account. All right.

A. That came in in '45. Therefore it was probably—or it was merchandise at the end of '44.

The Court: You say “probably.” What do you mean “probably?”

A. Well, the fact that the money went in in June of '45 doesn't indicate when the merchandise was sold.

(Testimony of Roland D. Hellman.)

Mr. Shelton: You mean June of '44, don't you, Mr. Hellman?

A. No, I don't. June of '45. That was the Lerman transaction. The \$7,000 on the 280 suits——

The Court: \$7,000 on the 280—where is it?

A. On the left side there, up a little higher.

The Court: Well, that just washed out one the other.

A. No, that merchandise, the proceeds from that were in the hands of Leavy. They are not included in Mr. Olender's net worth as presented by the Government at the end of '44.

The Court: After you consider the breakdown of all—starting with the top \$7,000, the 280 suits sold by Leavy to Olender——

A. That's right, that is the same \$7,000 all the way down.

The Court: It breaks itself right down, and the net result is \$7,725 which ultimately appears to have been cashed by the defendant?

A. And deposited in his personal bank [696] account?

The Court: Well, that does not reflect itself——

A. On the store books, no.

The Court: On the store books.

A. Therefore, it is an additional asset the Government never considered in its net worth statement.

Mr. Shelton: Your Honor, that is not supported. We offered evidence, the defendant's own statement, of cash. We rely on that.



(Testimony of Roland D. Hellman.)

A. This \$7,725 was in the form of funds in the possession of Leavy during the end of 1944.

The Court: Where do you trace that?

A. Into his personal account.

The Court: Would you show me that?

A. The \$7,725?

Q. Yes.           A. Yes.

The Court: You say you have it in his books in his personal account?

A. He does not have books for his personal account. We have his personal bank statements that show the deposits in his personal bank statements.

The Court: All right. Now we have \$12,725. Where is the balance of this?

A. The balance is \$8,550.

The Court: \$8,550? [697]

A. You see, if your Honor will—that \$20,550 in the upper lefthand side there, where it starts to break three ways, those three items, the \$5,000, the \$8,550——

The Court: \$5,000 is a wash transaction?

A. That is part of the \$20,550. It is a wash transaction but it affects the net worth at the end of '44. Inasmuch as the money was paid to Goodman in the early part of '44 and the proceeds were not received by Olender until '45, therefore that money or the merchandise had to be somewhere at the end of '44, either in cash or in merchandise. It is an additional asset that is not on the books or not on the net worth statement as presented by the Government.



(Testimony of Roland D. Hellman.)

Mr. Shelton: But, Mr. Hellman, you overlook the lack in the proof that these are the same transactions. Leavy did not testify that he had this \$5,000 at the end of '44. There is no testimony from him in the record.

A. I said it would be merchandise or cash.

Mr. Shelton: I know, but the inference I think is that Leavy would have had it. Another problem in this situation, if your Honor please, is that there is no attempt to even on the defense's theory to say what part of the suits which were on hand in their inventory were sold in '44 and what part were sold in '45. The defendant's story, as I understand it, he had suits in the basement, but he doesn't know how many. [698]

Now, if these suits were sold in '44, which there is strong reason to believe, because of the scarcity of merchandise, then if they were, then they weren't sold in '45.

Mr. Lewis: Your Honor, on the Lerman transaction, I don't think there is much doubt about when they were sold. The Government Exhibit No. 34, cashier's checks, 34 and 5, the cashier's check dated May 14th, 1945, and endorsed by Leavy and Olender—

Mr. Hagerty: And endorsed—

Mr. Lewis: —the Army & Navy Store.

The Court: That would increase the net worth, according to your theory, in the amount of \$20,000.

A. \$20,550.

The Court: \$20,550 in cash or in kind?

(Testimony of Roland D. Hellman.)

A. Cash or kind, yes. The inventory sheets here do not reflect that at the end of '44. Therefore—that there was no such items of merchandise. Therefore they could not be in the store books.

The Court: \$5,000 in the capital account——

A. \$5,000 that didn't go into capital until '45.

The Court: I can't conceive, counsel, that this becomes a matter of law for the Court, as these men pose this question to me, whether you consider it adroitly presented or otherwise.

Mr. Shelton: If your Honor please—— [699]

The Court: I am fearful that in trusting the matter to me as a matter of law you may be placing the Court in the position wherein, if I did rule, that these matters may be regarded as a matter of law, that I would be in error.

Mr. Shelton: If your Honor please, as I understood the defendant's testimony, he testified that these sailor suits were received, that they were in large sizes, they were unmerchandisable, they were put down in his basement.

The Court: That's right.

Mr. Shelton: Isn't the whole inference from that then, since we are outside the presence of the jury I can talk frankly——

The Court: Certainly, that is why I excused the jury.

Mr. Shelton: Isn't the whole inference of that that the whole thing was on hand as of December 31, 1944, if his story is true—which the Government—I can say again since we are not in the presence of the jury—which the Government doubts.

(Testimony of Roland D. Hellman.)

The Court: That is true. Here is a man on trial. He is entitled to present to the jury any theory he chooses which may aid his defense. I cannot foreclose him from presenting any matter nor could the Government nor could the defense counsel. He is entitled to do that.

Now he gets on this witness stand. I may not believe him. You may not believe him. I may believe him. As I say, [700] the question of credibility is involved. And he states that out of cash he bought the merchandise from Goodman. A certain number was sold. Finally included the 322 suits on the inventory from the Goodman transaction.

Now, one, if the 322 suits in the inventory were not part of the Goodman transaction, then there is no reason to change or alter any figures concerning net worth or otherwise, because the 322 suits were already considered in the purchases and the sales and the ordinary routine affairs.

A. The purchases, no, they were not included.

The Court: Counsel—I mean, Mr. Witness—if the 322 suits which, according to Mr. Shelton, were seized upon by this defendant to form a very happy coincidence to afford the defendant an opportunity to throw the Goodman transaction into the records, that is what Shelton—Mr. Shelton contends. He just says that the defendant picked the 322 suits out of the blue. His colleague earlier said in the case: He is pulling himself up by the bootstraps, with respect to the 322.

(Testimony of Roland D. Hellman.)

Now, that may be true, from their viewpoint. I am looking at it from the viewpoint of the Court. You are looking at it from the viewpoint of the accountant.

If the 322 suits are not part of the Goodman transaction, they were part of the details of the routine affairs of his business at the Army & Navy Store. Were they not, in the [701] inventory? Weren't they?

A. I didn't quite follow the end there.

Mr. Haggerty: That would be right, your Honor.

The Court: Isn't that natural? Certainly it follows as the night the day.

Mr. Lewis: Yes.

The Court: And if it follows as the night the day, if the 322 suits are not part of the Goodman transaction, there is no occasion to alter any record.

Mr. Lewis: That's right.

Mr. Hagerty: That's right.

The Court: Either inventory records, net worth records or cost of merchandise records.

Mr. Lewis: That's right.

The Court: Isn't that true?

Mr. Hagerty: That's right.

Mr. Lewis: That is correct.

The Court: All right. But if you believe the defendant's testimony that the 322 suits are part and parcel of the Goodman transaction, then you do alter net worth?

Mr. Lewis: That is correct.

Mr. Hagerty: That's right.



(Testimony of Roland D. Hellman.)

The Court: Now, that inevitably is the logic of your position?

Mr. Lewis: That is right. [702]

Mr. Hagerty: That's the disputed——

The Court: I don't care how you approach it, whether you say 44 at the end or the beginning, that is the logical disposition.

Mr. Lewis: That's right.

Mr. Shelton: Your Honor, clients speak through counsel, and in this case——

The Court: Now I may not believe the defendant, I may. I don't know. After a very thorough searching cross-examination you may find that the defendant seized upon it. Well, after collating the facts and orienting yourself to every phase of the case you may say that the defendant was, in the vernacular, playing cozy with the Goodman transaction, that he had a lot of cash stashed away. Now, let's speak in the vernacular, and this cash that he had stashed away he wanted to get rid of, and he had an opportunity with a very fast sale of merchandise. The merchandise in the sale, these sailor suits, was a fast moving commodity, he could sell in terms of 200, a hundred block suits. That he invested that cash, which was a little, in the vernacular again, a little warm, he invested that cash in the suits. He found that he couldn't dispose of them readily. He had to take them into the inventory. That is according to his theory.

Now, some of the jurors may believe that, that



(Testimony of Roland D. Hellman.)

he did have that cash, that he wanted to get rid of, he wanted to [703] get it into circulation.

But I can't foreclose the defendant from testifying that the 322 suits are part and parcel of the Goodman transaction. That is his testimony under oath, and he swore to tell the truth in this courtroom.

You gentlemen present to me your theory. I may or may not believe it. The defendant has the right to argue from the facts. This is a criminal trial. This is not a court trial. We have a jury. If we did not have a jury, I might cut this thing down very, very rapidly.

Mr. Shelton: If your Honor please——

The Court: Yes, sir.

Mr. Shelton: Clients operate through counsel.

The Court: Yes, sir.

Mr. Shelton: Your Honor was present here at the session this week after the end of the jury session when Mr. Lewis stated specifically that the defense did not intend to impeach the inventories and the Government accepted that statement.

The Court: Yes.

Mr. Shelton: The Government accepted that and believed that would be the case and I respectfully submit to your Honor that the purport of this question which is addressed here is to back up on the position which long after the start of the trial Mr. Lewis took in open court. [704]

Mr. Lewis: Your Honor——

The Court: No, there is just—. I have given

(Testimony of Roland D. Hellman.)

thought overnight to this problem, because it is a severe problem, it is a very, very grave problem underlying this case. It affects the rights of the defendant before me, it affects the right of the Government, and I gave serious thought to it. If the defendant is correct in his testimony and if he took the 322 suits out of the basement and included them in the inventory, and if they be out of the Goodman transaction, these 322 suits, then you haven't any corresponding entry in the books of account that would take the 322 suits into the books. Therefore, you have to revise and alter the books to the extent that you had a cost of that merchandise. Isn't that true?      A. That is true.

The Court: And if you had a cost of the merchandise, you have a corresponding differential in the figures that are before the Court, isn't that true?      A. That's right.

The Court: That is the way I approach it.

Mr. Hagerty: That is exactly it.

The Court: Because the 322 suits couldn't fly into that inventory. They did fly into the inventory, according to the defendant. I don't know.

Mr. Hagerty: That position was somewhat taken by [705] Government counsel in cross-examining the defendant: Why didn't you put it in that way?

The Court: It seems to me that—. In the course of the investigation the Government no doubt interviewed the bookkeeper who undertook to register these journal entries. It seems to me that the defendant at the time that he introduced these items

(Testimony of Roland D. Hellman.)

of sailor suits in the amount of 322 into the inventory must have had some conversations with the bookkeeper. It seems to me that with his background of training and his background of training not only in the college but in after years in book-keeping that he certainly knew he could not take those 322 suits without some corresponding entry in the books—although those matters may be gone into at some other stage.

Mr. Shelton: One other thing—

The Court: But looking at it purely and simply as a matter of logic, apart from the hypertechnics of the accounting aspect, as a matter of logic you have to have a corresponding entry, and if you do you are going to alter the figures. Now the question posed before me is not a matter of law, as I view it. I say that respectfully, Mr. Shelton, and likewise, counsel, not a matter of law, and if I ruled on it as a matter of law I would be promptly reversed, and I don't intend to get reversed—not if I can avoid it. [706]

Therefore, I will permit counsel to elicit from this witness—. Now I wish you would pose the hypothetical question a little more accurately, without reflecting—I think you have introduced some matters here whether or not the introduction of the Goodman transaction would affect the net worth and how it would affect it and break it down. Then it becomes a question of credibility. Ultimately you will argue to this jury, the Government will argue the Goodman transaction didn't have any place in

(Testimony of Roland D. Hellman.)

it, it is a figment of the defendant's imagination, and so forth, and that it is a defense gimmick. The defense counsel will argue contrarily. So you have a sharp conflict.

(Short recess taken.) [707]

(The following proceedings were had in the presence of the jury:)

The Court: You may proceed, counsel, in the light of our discussion and colloquy in the absence of the jury.

ROLAND D. HELLMAN

resumed the stand, and, having been previously duly sworn, testified further as follows:

Direct Examination

(Resumed)

Mr. Lewis: If your Honor please, I think that I will re-word that question over the noon recess and try to make it a little clearer.

The Court: I wish you would.

Q. (By Mr. Lewis): Now, Mr. Hellman, I am showing you defendant's Exhibit W and defendant's Exhibit Z, and I would like for you to trace these items through the books of the defendant, that is, the Barney invoices. Will you describe those for the benefit of the jury?

Mr. Drewes: If your Honor please, may I interrupt here? You will recall that at the time the offer was made I pointed out to your Honor there

(Testimony of Roland D. Hellman.)

were two letters attached to those invoices. I wonder if they might be removed.

The Court: Do you have any objection to that?

Mr. Hagerty: No.

Mr. Lewis: No objection whatsoever.

The Court: I read them. I can't recall the contents. [708] They may be removed. This is for identification, in any event. They haven't been marked in evidence.

Mr. Lewis: They haven't been marked, your Honor.

The Court: You merely want to refresh his recollection, do you?

Mr. Lewis: No. They were marked for identification so that this witness could identify the transaction through the books.

The Court: You might remove the letters.

Mr. Drewes: I understand. We have no objection. Just take the letters out and put them aside.

A. Exhibit W is a purchase invoice from Barney's Clothes Shop, Los Angeles, in the amount of \$2111.67. It is dated October 30, 1944.

There is also an invoice dated November 30, 1944, in the amount of \$248.26.

Exhibit Z, two checks, cashier's checks drawn on the Bank of America, Oakland, one of them dated November 9, 1944, in the amount of \$1911.77 is to Barney's Clothes Shop, endorsed by Barney's Clothes Shop, and cleared through the bank in Los Angeles on November 15, it appears.

The other check is dated December 12, 1944,



(Testimony of Roland D. Hellman.)

cashier's check on the Bank of America in the amount of \$248.26, endorsed by Barney's Clothes Shop, deposited on December 20, 1944. [709]

These items appear on Mr. Olender's books under Exhibit I—that's the purchase register—under date of October 30, 1944, purchase of \$1911.77, and another purchase on November 30, in the amount of \$248.26.

I might correct myself. When I read this invoice, the first one that I referred to, as to the total of \$2111.67, that figure was as stated on the invoice, but the adding machine tape of the items on this page only total \$1911.77, an error of \$200 in addition. The actual amount of the check is for \$1911.77.

These were entered in Mr. Olender's books under purchases under the dates of October 30th and November 30th, with charges to purchases and expense, and a credit to accounts payable, that is, a liability of Mr. Olender to make this payment.

Now, as testified by Mr. Olender, these cashier's checks were purchased from cash funds, not from store funds. Therefore the invoices had been recorded on the books as a purchase and the amounts owing had been recorded.

As evidenced by these checks, they were paid for 1944. However, the books indicate that he owed this money at the end of '44.

In February of 1945 an entry is made in the general journal of Mr. Olender's books under date of February 28th—that is in the general journal, Ex-

(Testimony of Roland D. Hellman.)

hibit J—charging— [710] reducing accounts payable by total of \$6803.02, and crediting Mr. Olender's capital account, the investment account, for \$6903.02, with an explanation, "To record cash payments covering purchases from Money Back Smith and Barney's Clothes Shop."

Now, that was further posted to the general ledger as a separate—that was combined with other—under date February 28th, 1945, in accounts payable sheet of general ledger there is a charge to accounts payable of \$6903.02, which is posted from the general journal figure which I just read to you.

The credit to Mr. Olender's capital account was also posted in February.

There is an item appearing in the capital investment account of February 28th, 1945, coming from general journal 17 of \$6903.02.

The effect of that was, the books stated that at the end of 1944 Mr. Olender owed this amount of money. Yet we have shown on the Barney transaction, which is part of the \$6903.02, that that amount in fact had been paid by Mr. Olender with personal funds and therefore in February the store, February, '45, the bookkeeper made an entry crediting his capital account and reducing the accounts payable which had been erroneously set up at the end of '44. [711]

Q. (By Mr. Lewis): Now, will you trace through the Smith transactions? There has been testimony——

The Court: When you say it was erroneously set up in 1944, have you had the benefit of any con-

(Testimony of Roland D. Hellman.)

versations with the bookkeeper who made those entries?

A. No, sir. But they are made in the books as of 1944.

The Court: There is nothing erroneous about the entry. The entry is there. I mean, that is merely your supposition, the erroneous entry. The account is there in the books. Finally it was journaled out in '45 in the light of some conversations no doubt the defendant had.

A. The fact that it was set up as an accounts payable, when in fact the cashier's checks evidenced that the merchandise was paid for, it is erroneous to show it as being an account payable.

The Court: It is erroneous from your present viewpoint, looking at the books objectively, with all of the facts presently before you, and with the cashier's checks before you, but looking at it from a standpoint of the bookkeeper who was then engaged in preparing the books of account and keeping the books of account, it may then have been an accurate entry, isn't that true? If the bookkeeper did not know that Mr. Olender had paid for the items as a result of cash which finally found its way into cashier's checks at that time, the entry may have been a correct one [712] from her viewpoint, isn't that correct?

A. That's right, if she had no knowledge of the bills being paid for by cash.

Mr. Shelton: If your Honor please, may we get one thing clarified, too, in connection with your

(Testimony of Roland D. Hellman.)

Honor's question? Mr. Hellman has testified that as to the Barney items, the cashier's checks are the evidence of payment. Now, the \$6903.02 item also included Money Back Smith adjustment——

A. That's right.

Q. Did it not?

A. Mr. Lewis just asked me to explain it, yes.

Mr. Shelton: Now, on what basis—on what basis did you assume that payment had been made of the Money Back Smith items, Mr. Hellman?

A. The original entry in Mr. Olender's books, general journal 17, under date of February 28, which I just read. I will repeat. The debit was to accounts payable \$6903.02 The credit was to M. Olender investment. The explanation of that journal entry is to record cash payments covering purchases for Money Back Smith and Barney's Clothes Shop. That is taken from Mr. Olender's original books which were kept by his [713] bookkeeper.

Mr. Shelton: But there is this difference in the two items. As to the Barney's items, you have the supporting evidence of the cashier's checks which are in evidence. You have no similar supporting evidence to those cashier's checks with respect to Money Back Smith items, do you?

A. The Money Back Smith items was evidence in testimony by Mr.—the gentleman that appeared here.

Mr. Lewis: Lorenzen.

A. Lorenzen, yes, the other day.

(Testimony of Roland D. Hellman.)

Mr. Shelton: Your Honor, I ask that that be stricken on the ground that the testimony of Mr. Lorenzen, as will be seen, is very vague and indefinite and does not tie in to this particular testimony of this witness.

Mr. Hagerty: If your Honor please, I would suggest—I ask your Honor to strike counsel's remarks and ask him not to be arguing these questions before the jury.

The Court: Yes. The statement may be stricken. You might proceed and then you can cross-examine on these aspects as you go along.

A. Referring back to—do you want me to proceed with Money Back Smith?

The Court: Yes.

Mr. Lewis: Yes.

A. Referring back to Exhibit I, Purchase Register, Mr. Olender, page 22, under date of 1944, February 8th, an item [714] of \$750 for purchases. There is also \$22.95 for freight, making total accounts payable \$772.95.

Under date of February 3, \$425 for purchases, \$25 accounts payable—debit and credit.

February 2, Money Back Smith, \$1035 purchases, \$13.57 freight, \$1048.57, credit to accounts payable.

February 24, \$950.33 purchases, \$950.33 accounts payable.

February 24, \$657 purchases, \$13.22 freight, \$679.31 accounts payable.

March 15, \$468.88 purchases, \$11.77 freight, \$480



(Testimony of Roland D. Hellman.)

—correction. \$11.70 freight, \$480.58 accounts payable.

March 8, \$318 purchases, \$318 accounts payable.

March 2, \$68.25 purchases, the same amount, \$68.25.

Those items add up to a total \$4742.99, which, when added to the Barney purchases of \$2160.03, make a total of \$6903.02, which I just identified as being credited to Mr. Olender's capital account in February of 1945.

These Money Back Smith purchases were posted from the purchases register into the accounts payable in the general register. They are part of the total shown on this page, of \$14,452.24 of credits to accounts payable, and that item is posted in the accounts payable record as being owing at the end of 1944.

Q. (By Mr. Lewis): Now, assuming—

Mr. Drewes: If your Honor please, might that testimony [715] with respect to Money Back Smith go into the record subject to a motion to strike?

The Court: Yes, subject to a motion to strike.

Q. (By Mr. Lewis): Now, assuming that the evidence supports the payments by cash, Mr. Olender, not from the store, for the Barney items and the Money Back Smith items, what is the amount of the overstatement of the accounts payable as of December 31, 1944?

A. It would be \$6903.02.

Q. What effect would that overstatement of ac-

(Testimony of Roland D. Hellman.)

counts payable have on the net worth of the defendant as of December 31, 1944?

A. At the end of 1944 it would increase his net worth by crediting him with the cash that had been used to pay for this merchandise.

Q. What amount?

A. \$6903.02. Did you also ask me for the effect—just the year '44 or '45?

Q. What effect would that then have in net worth method on the year 1945?

A. By increasing the net worth at the end of 1944, under the net worth method, there would be a decrease in the net income as computed on net worth method on the year 1945?

Q. I am showing the thousand dollar check, Defendant's Exhibit G, that it was testified here earlier was drawn on December 23, the Army and Navy Store, 1944, and deposited in [716] personal bank account January the 10th, 1945, and was referred to as an outstanding check during that period. What effect does that check have on the net worth of the defendant as of December 31, 1944?

Mr. Shelton: If the Court please, could it be made clear that these questions are hypothetically based on the defendant's theory? I think Mr. Lewis is stating them more as facts.

Mr. Lewis: Assume those facts are true. They are in the record.

All these questions of this nature here, your

(Testimony of Roland D. Hellman.)

Honor, naturally are hypothetical. We have to assume——

The Court: This is the check that was cashed January 10, 19——

Mr. Lewis: 1945.

The Court: ——1945 and assertedly held by the defendant in his pocket over the interval of time?

Mr. Lewis: Yes. That is the check.

The Court: All right.

Q. (By Mr. Lewis): Assume those facts, what effect would that have on the defendant's net worth as of 1944?

A. It would increase his net worth at the end of 1944 by \$1,000.00.

Q. I will show you Defendant's Exhibit "X" for identification. What would be the effect for 1945 on the defendant's [717] income on the net worth basis, of the check for \$1,000.00, Defendant's Exhibit G?

A. It would reduce the net income on a net worth basis for the year 1945 by \$1,000.00.

Q. I have shown you Defendant's Exhibit there——what letter is that?      A. "X."

Q. "X." Will you——

A. Is this an exhibit or marked for identification?

Q. It is marked for identification. Now, I want you to take that invoice and show how it shows in the defendant's books.

A. The first item appearing——

Mr. Lewis: Your Honor, this is an explanatory

(Testimony of Roland D. Hellman.)

invoice. Pardon me, just a moment, Mr. Hellman.

This is an explanatory invoice. Earlier in the trial you were asking how the defendant could identify the invoices and connect it up with the payments as shown on these books, and that is an invoice of many types from one store, and I want him to show how the defendant's book would show that as an accounts payable.

Mr. Drewes: May I have that explanation again?

The Court: You are using this as an example.

Mr. Lewis: To show the procedure.

The Court: I understand.

Mr. Lewis: It has no particular bearing on the case, [718] but your Honor asked me that question.

Mr. Drewes: Well, the question was asked of the defendant as to how he could identify his specific purchases?

Mr. Lewis: How they were shown, specific purchases were shown on the books. He said there could be no identification where the company he was dealing with sold numerous items, although the total amount of the invoice would show on the books, and that is the purpose of that exhibit.

Mr. Drewes: Was that question directed toward the books or toward the defendant's knowledge?

Mr. Lewis: No, it is a clarification of the book-keeping system of the defendant.

A. In Defendant's Exhibit I, Purchase Register, Page 58, under date of October, 1946, there is an item under date of October 1st, Western Military

(Testimony of Roland D. Hellman.)

Supply Company, freight 39 cents, merchandise purchases, \$44.30, accounts payable \$44.69, for which is this first invoice of Western Military Supply dated October 1, 1946.

The second invoice is for \$12.28, which is reflected on the books as \$12.00 purchases, 28 cents freight, accounts payable, to Western Military Supply, \$12.28.

The third invoice dated October 2, 1946, in the amount of \$106.80, identified on the books under date October 2, \$101.40 purchases, \$5.40 freight, total amount payable \$106.80. [719]

The fourth invoice under date of October 3, 1946, \$24.26, identified on the books as purchases, \$24.00, freight \$.26. Total accounts payable to Western Military Supply, \$24.26.

The next invoice from Western Military Supply under date of October 9th, total \$44.78, identified on the books, \$44.40 and \$.38 freight, \$44.78, accounts payable to Western Military Supply.

October 10, 1946, total invoice \$29.08, identified in the books as \$28.80 purchases, \$.28 freight, \$29.08 accounts payable to Western Military Supply.

The next invoice, No. 17782, on October 11, 1946—incidentally, these invoices bear numbers. They are printed, stamped numbers of the Western Military Supply Company. \$21.48, identified in Mr. Olender's books as \$21.20 purchases, \$.28 for freight, a total of \$21.48.

Western Military Supply Invoice 17803 under date of October 14, 1946——



(Testimony of Roland D. Hellman.)

The Court: Do you think you have gone through enough of these now?

Mr. Lewis: Yes, I think we have.

The Court: We will take the noon recess, ladies and gentlemen. The same admonition to you not to discuss the case or form an opinion.

We will resume at 2:00 o'clock.

Mr. Drewes: May I address the Court briefly after the [720] jury goes out?

The Court: You may retire. There are matters to take up.

Mr. Lewis: I would like to offer Defendant's W——

The Court: Do it at 2:00 o'clock. The jury is on its way out.

(The following proceedings outside the presence of the jury:)

Mr. Drewes: If your Honor please, in connection with the information the Court requested, an analysis of purchases, inventories, Mr. Mytinger has suggested to me that there are some very serious difficulties involved and that possibly the matter might be clarified. As the record already shows the record of sales, I take it, accumulative figure, taken either daily and then posted to the records, and also the records of purchases are apparently incomplete. As illustrative of that, your Honor may recall at some time early in the trial I asked counsel if they would look and see if they could find some invoices from the Goodman sales agency. The jury

(Testimony of Roland D. Hellman.)

not being here, I will show these to your Honor. (Handing photostats of Goodman Sales Agency invoices to the Court.)

The Court: The reason that I am prone to suggest it is, I think in fairness to both sides of this controversy, because during the course of your cross-examination you asked a very specific significant question. As I recall, you had in your hands an invoice, or a photostatic copy of an invoice [721] and asked the defendant on the stand, "Isn't it a fact"—and I think the invoice covered 100 odd suits, sailor suits—"isn't it a fact that the 322 suits shown in the inventory came as a result of the purchase shown by this invoice? Do you recall that question?"

Mr. Drewes: A prior purchase from a similar source, because there was a date difference.

The Court: Do you recall that question?

Mr. Drewes: Yes, I do. The price was the same.

The Court: The price was the same.

Mr. Drewes: Yes, that is the cost to him.

The Court: No, of course if the records are not available, there is nothing I can do about it. But it seems to me that the defense has kept some of these invoices——

Mr. Drewes: Well, the defendant has testified he has no invoices from the Goodman Company, your Honor, and those you have up there, your Honor, came out of the file of the Goodman investigation, which was a separate, entirely separate matter.

(Testimony of Roland D. Hellman.)

The Court: Let me try to think this thing out a little bit. The Government has had an opportunity to give two or three or four years to make this investigation, I assume rather intensively. I assume they have collated, collected, marshalled all of the facts necessary in the preparation of an orderly case. Customarily that is the situation as I view it. Likewise I assume the defense are prepared. [722]

Now, if my suggestion is non-productive or would not bear any evidentiary fruit, would not help us solve our problem, and I seeking to find a solution, then, of course, I will withdraw my suggestion.

Mr. Drewes: It was the opinion——

The Court: Such suggestion was not made in regard to the Government's side of the case or the defendant's side of the case. I try to sit here in somewhat of a non-partisan attitude, and I am trying to think of the jury, and in a jury case I try to refine the facts for the jury. That is all I can say.

Mr. Lewis: Well, your Honor, it doesn't matter to us if they want to go through all those invoices with us, we will do it. If they don't, that's up to them.

Mr. Drewes: That isn't quite how the problem arose, Mr. Lewis.

The Court: I think we are all trying to be helpful, as helpful as people could be, one representing the Government, one representing the defendant. But from the Government's view point, in light of the prior investigation, in light of the questions

(Testimony of Roland D. Hellman.)

they posed to various witnesses, I don't know the extent of the investigation, certainly, but if it is not a suggestion that is productive, I will withdraw it. I only said in the light of simplifying the matter.

Mr. Shelton: Your Honor, I might say one thing that will [723] clarify our position a little bit. We think many of these suits may have been sold off the floor through the cash register, and if that is true, there would be no separate record of those sales. They will just appear in the cash register totals, and it is for that reason that the Government in part feel that the analysis of purchases without being able to trace the sales, might not get us ahead far.

The Court: Apart from the matter of sales, I assume the government went over the purchase invoices very carefully, did they?

Mr. Shelton: They were certainly made available to the government agent, your Honor. I may say that in a net worth and expenditure case, when the Government has established proof that it believes justifies that method, it is a less careful examination of the purchase and sales records than where specific items of unreported income are charged.

The Court: I understand that, but there is no contention on the part of the government that the defendant destroyed any purchase records, is there?

Mr. Shelton: We don't know.

Mr. Drewes: We don't know.

Mr. Shelton: Operating in the black market as

(Testimony of Roland D. Hellman.)

we believe he did, that was a customary occurrence.

The Court: Well, the case will go to the jury, then, on 322 suits according to the Government's adequately stated [724] view thus far, and according to the defendant's, stated from your viewpoint, the 20 suits differential rest in the realm of uncertainty, in the limbo of uncertainty, some place lying around, and there it is.

Mr. Shelton: One other point, if your Honor please, with respect to Mr. Lewis' hypothetical questions and other similar questions, in the absence of the jury, we would just like to have the record show we have a running exception in the event of any possible cross appeal, and we won't renew our objections in open court.

The Court: That will be noted.

On your last item you renew your motion to strike with respect to the increase or asserted net increase of net worth in the amount of \$6,900.

A. \$6,903.02.

The Court: \$6,903.02.

Mr. Drewes: Your Honor, may I request and qualify that with respect to—with particularity to the Money Back Smith transactions, which are something less than that \$6,000.00 figure.

Mr. Shelton: Your Honor will recall that ties in with the Lorenzen testimony.

The Court: Yes.

Mr. Lewis: Your Honor, I thought we stated here the other day that the exceptions would be noted on all the objections. [725]

The Court: That is correct.



(Testimony of Roland D. Hellman.)

Mr. Lewis: Without the necessity of stating the exception.

The Court: Taking that transaction, that \$6,903 transaction which assertedly increases the net worth and in turn decreases the net profit for the year in question, correspondingly in the following year, isn't it conversely true?

A. That disappears in 1945 and it does not appear on the net worth at the end of '45. Therefore it wouldn't increase—'46, I should say.

The Court: Well, here let us take—you have the books of account and the books of account fail to reflect an actuality. The actuality was that the accounts payable in question had been paid out of cash. The bookkeeper apparently either did not know it or was not instructed to make a corresponding journal entry, journaling that out of the situation, crediting his capital account and debiting the other account as it may appear.

Are you gentlemen satisfied that that would increase the net worth at that time?

Mr. Shelton: It doesn't affect the year '46, if your Honor please. By increasing the assets at the beginning of '44—'45—the net—— [726]

The Court: Isn't it washed out in the very nature of things, one year against the other?

Mr. Shelton: No, sir, because it affects the beginning of '44, not the end. In other words, if a man has \$10,000 at the beginning of the year and \$20,000 at the end, and then you increase his begin-

(Testimony of Roland D. Hellman.)

ning \$2,000 and don't change his end, you have cut the income in that year from \$10,000 to \$8,000.

The Court: Well, are you satisfied that this item as it is now explained increased net worth at that time?

Mr. Shelton: It increased the net worth at the starting point on their theory.

The Court: All right. Are there any other items of cash payment, out of pocket payment, that would affect the accounts payable?

A. Accounts payable? No. Your Honor, when they say the invoices have been lacking, are they? We have available, I think, the invoices for '45 and '6.

Mr. Lewis: Oh, yes.

A. As they show——

The Court: Let me ask this question. Apart from the cash transactions made out of pocket or out of cash funds or out of evolved funds, or out of the safe deposit box funds, when he paid a bill, an invoice, did he mark on the invoice "Check No., paid," and so forth, as is usually done? Giving the check number or some corresponding number? [727]

A. Well, these were paid in total, like, for example—Yes, he had a card control for, like, Western Military, he kept a regular little card of all of his purchases, and accumulating his total purchases, he then would pay them monthly and write a check and make the entry on the card that the account was paid.

(Testimony of Roland D. Hellman.)

His bookkeeping system wasn't—it was kind of a mixture of—it wasn't a regular system, that is, the type of system that you find——

The Court: As the record now stands, gentlemen, the request I made is withdrawn, or do you desire to collate the invoices from the purchase side?

Mr. Shelton: Would your Honor give us a minute, please?

The Court: Yes.

(Discussion off the record.)

Mr. Drewes: An analysis of purchases would be helpful. We will undertake to make that. The reason I brought the question up, as I understand it, the Court wished the information for the purposes of clarifying the problem——

The Court: The court and the jury.

Mr. Drewes: And I simply want to point out, there were certain definite limitations to preparing a conclusive statement from an overall picture.

The Court: In what manner was the sales tax register maintained? How was that handled? [728]

A. For payment of sales tax?

The Court: Yes.

A. I have never seen a sales tax return. In normal procedure it would be to take the sales as reported by the books and compute the sales tags on that basis.

The Court: Off the register, or how?

A. Well, the sales were recorded from the regis-

(Testimony of Roland D. Hellman.)

ter readings, in the cash deposits, in the bank, and therefore that would be the figure that would be in the books.

The Court: For instance, I am "X"—I am a sailor. I go into the Army and Navy Store to buy a sailor suit and I pay cash.

From your examination of the books of account, as you have engaged, how would my transaction, that of ex-sailor, be reflected in the books? I give you \$35.00 for the suit.

A. Through the total sales rung up.

The Court: Tell me, I am in the store. Now, how is it handled, according to your view of the books?

A. And the testimony?

The Court: And the testimony thus far.

A. The sale would be rung up on the register.

The Court: Yes.

A. At the end of the day the total reading from the register would be taken.

The Court: There weren't going to be any hand memoranda [729] made or little memoranda tag, or anything?

A. Not unless I thought in the event that he was making this over to refunds to the sailors, any sales that they—they can't alter the suits properly, and if the sailor can't make a proper alteration and brought the suit back,——

The Court: Either from the Government's viewpoint or from the investigation made by the accountants, Mr. Shelton, was it determined at any time that the defendant kept the usual little sales

(Testimony of Roland D. Hellman.)

tags that you find in large and small businesses?

Mr. Drewes: What is the answer, Mr. Root?

Mr. Root: No.

Mr. Shelton: Do you want to come up here, Mr. Root?

Mr. Root: My understanding is that there weren't even any tapes, that the total on the cash register represented the sales figure for the day. It is my understanding that I received at the beginning of my audit. There may have been tapes which weren't available. At least the tapes weren't available. [730]

The Court: So the consequential result of that is that you would not be able to collate for the Court and the jury the details going to make up sales of any given commodity, be they blue sailor suits or hairpins, isn't that right?

A. No, not specific. You could do it on a mathematical basis. You could try to work it on a mathematical basis by taking the purchases and taking the sailor suits out of the purchases and determining the ratio of gross profit. That will give you an idea.

The Court: Where is the bookkeeper who kept these books during the course? Is he or she available?

The Defendant: May I answer?

The Court: Yes.

The Defendant: She lives in Oakland in one of the outlying districts there.

The Court: At least from an evidentiary viewpoint the total purchases reflected by the books from



(Testimony of Roland D. Hellman.)

the invoices of sailor suits will have some evidentiary quantum of value because the suggestion was made, I think by counsel, that the inventory at the end of a given period was increased.

Mr. Lewis: That's right.

The Court: And I think objectively, at least looking at the matter now, that we may rationalize from the invoices.

Mr. Drewes: Your Honor, would the Court consider——

The Court: It may be perfectly apparent to you, [731] gentlemen, that this is not an easy case for a jury. I think you will say that without——

Mr. Drewes: I shouldn't hesitate.

The Court: There should be unanimity of viewpoint.

Mr. Lewis: I have devoted enough thought to think out a way to present it so that an untrained person could understand it. I agree, your Honor.

Mr. Hagerty: Sometimes it overwhelms the attorneys in the case.

The Court: Never you, Mr. Hagerty. Some attorneys perhaps.

Mr. Drewes: If your Honor please, would the Court consider calling the defendant's bookkeeper as a Court witness, subject to cross-examination by both parties?

Mr. Hagerty: Well, we will see if we can get her.

The Court: As I view the case now, if I were trying it as the Court, apart from the jury sitting

(Testimony of Roland D. Hellman.)

here, I would make certain directions, that I wanted certain evidence and certain testimony. However, I am not going to make a suggestion in a jury case. It is a matter for the Government or the defense to present. It isn't my province to intrude myself in the trial of the case. I try, and sometimes fail, to engage dispassionately and earnestly and fairly in the trial of these jury cases, and now in my eagerness to bring to the forefront the facts, I may fail, I may show some [732] partisanship. I try not to. In my final explanation to the jury I will indicate to the jury that any suggestions I have made, any examination I have engaged in is not to be directed in favor of or against either party to the cause, but possibly to aid the jury.

Now this is not an easy case for a jury. As a matter of fact, I would consider the last case I tried, Mr. Shelton, as an easier case to present to the jury than this case, curiously enough. I think it was an easier case. Because in there you had eight, ten or twelve specific instances of asserted misconduct and in this case you are dealing with the so-called Goodman transaction almost in its entirety as the basis for misconduct on the part of this defendant.

Isn't that correct?

Mr. Shelton: That is correct, your Honor.

The Court: And that being so, and in surrounding the Goodman transaction with all of the tests and ascertaining the truth, there are not as many avenues of approach available as perhaps there were

(Testimony of Roland D. Hellman.)

on the Chin Lim Mow case, and yet in the Chin Lim Mow case we were dealing with Chinese books of account.

(Thereupon an adjournment was taken until two o'clock p.m., this date.) [733]

September 26, 1952—2:00 P.M.

(The following proceedings were had in the presence of the jury:)

ROLAND D. HELLMAN

resumed the stand, and having been previously duly sworn, testified further as follows:

Direct Examination

(Resumed)

Mr. Lewis: Your Honor, at this time I want to introduce into evidence the Barney's Clothes Shop order, defendant's W for identification, and the cashier's check, defendant's No. Z for identification.

Q. Assuming in the year 1944 the defendant purchased and received from Goodman 822 suits at \$25 each and the total of \$20,550 paid represented personal cash funds taken from his safe deposit box and that the sailor suits were ultimately disposed of as follows:

1. 200 suits in 1945 sold through Leavy to Lerman for \$5,000.

2. 280 suits in 1945 sold through Leavy for \$7,000. The proceeds remaining in Leavy's hands until

(Testimony of Roland D. Hellman.)

turned over to Saraga in August, 1945, as shown in Saraga's books.

3. 342 suits of an aggregate cost of \$8,550 transferred into the stock of the Army & Navy Store, 20 suits being sold through the course of trade, and 322 suits being [734] included in the store inventory as of December 31, 1945.

Assuming further that the original purchase of the 822 suits from Goodman was not entered in the books of the Army & Navy Store as inventory before December 31, 1944, and that the \$5,000 proceeds from the sale to Lerman was entered on the books of the Army & Navy Store as capital investment, the money having been deposited in the store bank account.

Assume further that the \$7,000 proceeds from sales by Leavy were returned to Mr. Olender in 1945, augmented by \$725 as represented by U. S. Exhibit 41, and as set forth in Schedule 1 of the survey that we passed out, which sum of \$7,725 defendant turned over to Leavy for transmission to Saraga in 1945.

Assume further that the sum of \$7,725 had not been returned to the defendant until 1946 and was then deposited in his personal bank account.

Based upon the foregoing assumptions, what is the effect of the Goodman transactions upon the defendant's net worth at the end of 1944 and 1945, respectively?

A. Based upon the assumptions in your question, the effect of the Goodman transaction in the

(Testimony of Roland D. Hellman.)

net worth of Mr. Olender is as follows: In addition to the assets listed in the net worth computation made by the Government, Mr. Olender had an asset as of December 31, 1944, of \$20,550, [735] which asset consisted of 822 sailor suits in the basement, which were segregated and not included in the store inventory as of December 31, 1944, as shown by Exhibit N. That asset was not taken into account by the Government in their list of assets shown by the net worth statement.

The Court: As of what time, Mr. Witness, \$20,550—as of what time?

A. December 31, 1944. As of December 31, 1945, the net worth would have been \$7,725 more due to at that time the Saraga check being in the possession of Leavy, at the end of '45. The net effect of that on an income basis, net worth income basis, is that comparing on the Government's schedule is to reduce income in 1945 by \$12,825 and reducing the net income in 1946 by \$7,725.

Mr. Lewis: At this time, your Honor, I had prepared a simple form of net worth statement which I would like to pass out to the jury, and I have provided the Government with a copy of it two days ago, as an explanatory matter, your Honor.

The Court: This is an admixture of fact and law?

Mr. Lewis: It is just an example, an example of a simple net worth statement showing the factors if all the facts were known and were simple.

The Court: I see. Does the Government have



(Testimony of Roland D. Hellman.)

any objection to this? I haven't been able to read it thoroughly. [736] I just glanced at it.

Mr. Drewes: What is this that counsel is referring to?

Mr. Lewis: This is an illustration of a net worth statement. I thought it might clarify——

The Court: This is merely——

Mr. Lewis: It is in simple form.

The Court: This is merely for the purpose of illustration, is it, counsel?

Mr. Lewis: That is right.

The Court: Well, subject to any correction the Government may note herein, I would see no objection to using it as an illustrative matter. The Court will instruct the jury hereafter as to net worth. Yes, I think it is fairly accurate just from glancing at it.

Mr. Lewis: I think it is accurate, your Honor. I just thought it might clarify it for the jury, if the jury could look over it.

The Court: I say "fairly accurate." You say "accurate." I say "fairly accurate" because I have had two minutes to read it. You have probably been working on it overnight. So I still say, "fairly accurate."

Mr. Lewis: Your Honor, has your Honor ruled on the admission in evidence of those exhibits?

The Court: This is not the subject of admissibility in evidence. You may—— [737]

Mr. Lewis: No, I mean on the defendant's W and Z, the exhibits which I offered a moment ago.

(Testimony of Roland D. Hellman.)

The Court: Is there any objection?

Mr. Drewes: No objection.

The Court: All right, they may be marked.

The Clerk: Defendant's Exhibits W and Z heretofore marked for identification now in evidence.

(Thereupon documents referred to, previously marked defendant's Exhibits W and Z for identification, were received in [738] evidence.)

Q. (By Mr. Lewis): And now, Mr. Hellman, will you explain as simply as possibly the illustration of net worth in the net worth statement that has been presented to the jury? Just follow the schedules down as you are reading it.

A. I will read through this illustration, if you have it in your hands, giving an illustration of net worth and net worth statement.

"Net worth is simply defined as the excess of all assets, such as cash, money in banks, real estate, bonds, et cetera, over the liabilities or obligations owing.

"Assets less liabilities equal net worth."

The formula for that is,—“A minus L equals NW.”

“The average business person construes this to mean the values of assets based on current market values. However, from an accounting viewpoint—”

The Court: Read a little slower.

A. “However, from a accounting viewpoint the

(Testimony of Roland D. Hellman.)

values would be based on actual cost. As a simple illustration of the difference, suppose you owned at December 31, 1951, the following.”

This schedule shows cost basis and market value. We read down the list:

Item, a home with cost of \$10,000, market value \$15,000.

Furniture, \$2,000; market value, what you could sell it for, is a market value of \$1,000. Stocks, \$10,000; market [739] value \$2,000. Supposing that he raised the value \$1,000.

Cash in bank, \$1,000; same balance for market value. That is, cash and market value are the same.

Auto, \$2,000; market value, \$1,000.

Total assets, \$16,000 cost, \$20,000 market value.

Less a mortgage on the home, that is, a liability, \$8,000. Leaves a net worth on cost basis of \$8,000. Eight from sixteen is twelve, or market value \$8,000 from \$20,000 would be \$12,000.

“A net worth statement is an attempt to reconstruct the net worth at the end of certain years or accounting periods, based on costs, and comparing the balances to determine the increase or decrease during the period. To illustrate, using the example above based on cost:

“Balance December 31, 1951—” we have the same items—“home, furniture, stocks, cash in bank, with net worth \$8,000 at the end of December 31, 1951.”

Now, changes during 1952. Perhaps you showed \$1,000 worth of furniture with a balance up to

(Testimony of Roland D. Hellman.)

\$3,000. Perhaps you put \$1,000 cash in the bank, would increase the balance by \$2,000. Assume you paid \$500 on the mortgage, that would reduce the mortgage. Therefore there would be a change of \$500, bringing the balance down to \$7,500.

Opening balance of the net worth at the end of 1951 was \$8,000. There were \$2,500 changes during the year, giving the [740] balance at December 31st, 1952, of \$10,500.

Now, we compare net worth of December 31st, 1952, of \$10,500, and net worth at the beginning of the year \$8,000, and the increase is \$2,500.

“Where this method is used to determine the income on which to base the tax, the non-deductible expenses, living expenses and money spent for items not affecting the net worth are added to the increase at the end of the year.”

For example, living expenses for food, clothes, utilities, et cetera, \$200 per month estimated, would be \$2,400 spent for those items during the year.

Income tax paid, suppose it was \$600. There is \$3,000 spent, added to the sum of \$2,500 at the end of the year, would make net income based on increase in net worth \$5,500.

If the net income reported was \$5,000, the income was understated by \$500. If the net worth reported was \$6,000, the income was overstated by \$500, and net income based on increase in net worth was only \$5,500, reporting \$6,000 wouldn't have been overstated by \$500.

Mr. Drewes: Would you have any objection if

(Testimony of Roland D. Hellman.)

I asked one or two questions as to other matters——

Mr. Lewis: Yes.

Mr. Drewes: ——which might be included in such a statement?

Mr. Lewis: Yes.

Mr. Drewes: I would ask the witness: Mr. Hellman, I [741] note that under "Living Expenses" you have \$200 per month estimated. Why do you put an estimated figure down? Would that not be put in accurately if it was possible to do so?

A. If it were possible to do so, it would, but I have never seen a net worth statement accurately reflect actual living expenses of anyone.

Q. (By Mr. Lewis): Among the items which you have included, you would also include "Cash not in Bank," would you not?

A. Yes, cash on hand or in the bank.

Mr. Drewes: If among the assets there were income property, the value would be net of depreciation?

A. Net of depreciation, that is right.

Mr. Drewes: And with respect to cash in bank, the figure would be reconciled for outstanding checks?

A. That is correct.

Mr. Drewes: Thank you.

Mr. Lewis: Your Honor, I have prepared now sheets which I think correspond to our evidence on the record there, a very—it is based on the method——



(Testimony of Roland D. Hellman.)

The Court (Interposing): Do you have a stipulation?

Mr. Lewis: We start with a stipulation. The exact figures of the Government's stipulation, or the Government's computation, rather, your Honor. Do you still have those sheets there, Mr. Drewes, on which you were basing the net worth, Government's computation? I think the net worth was the same as [742] their stipulation, was it not?

Mr. Drewes: I don't recall what you are referring to. Is it these (handing documents to counsel)?

Mr. Lewis: Yes. Yes, the net worth is according to the stipulation, your Honor.

The Court: All right. I have examined this Schedule 3. Schedule 4, "Disposition of cash in safe deposit box," do you expect to offer some testimony in association with it?

Mr. Lewis: Well, what I intended to do in that regard, your Honor——

The Court: There isn't any basis in the record for many of these items.

Mr. Lewis: I think Mr. Hellman can testify as we go along on that matter, showing how he reaches the cash in box figure.

The Court: Wouldn't this be the subject of testimony by the defendant himself, if there be any basis for it, disposition of cash in the safe deposit box. The cash in the safe deposit box apparently was recurrently taken into the other phases of the business and had many, many ramifications.

Now I notice, without again extending my exam-

(Testimony of Roland D. Hellman.)

ination more than a brief moment, I see many transfers here, many negotiations, that probably only the defendant could account for.

Mr. Lewis: Well, your Honor——

The Court: Does the Government have this breakdown?

Mr. Lewis: Yes, your Honor, I am examining it now. [743]

Mr. Lewis: Your Honor, the first statement in that safe deposit box is the testimony of the defendant as to \$75,000, and the affidavit of Judge Friedman as to \$70,000, an excess of \$70,000, and that appears on the transcript.

The Court: Well, let's take the matter up and see as we go along.

Mr. Lewis: Yes.

The Court: Are there any questions on the part of any jurors with respect to the general illustration of net worth and net worth statement as submitted? Do you have copies, ladies and gentlemen, of this illustration of net worth?

In substance, the Court will hereafter charge you as to the law, and the illustration given by Mr. Lewis is in accordance with the general principles of law applicable to net worth as I will announce them to you. There may be refinements here and there that will enter into the matters, but by and large I would say that this is a fairly accurate presentation of what a net worth statement is.

Now, if there be any questions, you may address them to the Court, through Mr. Lewis, or to the

(Testimony of Roland D. Hellman.)

witness. If you haven't any at this juncture, feel free at any time to discuss any matters with the Court, because we are launching into a subject that is technical. Matters of accounting are—it is a field of art and endeavor entirely divorced from many of the engagements of the jurors; and ordinarily the jurors, [744] I suppose, feel quite content in many instances if you are able to balance your bank account, as sometimes the Court is. But we are involved in matters of accounting and it is a technical subject. And, under the circumstances, if there be any questions, feel free and have no reluctance to direct them to the Court at any time.

Mr. Lewis: I will pass out our proposed statements here to the jury.

The Court: Before these documents are passed to the jury, I think we had better have the foundation laid as to the preparation and attendant background and the predicate.

Mr. Lewis: Yes.

Q. Mr. Hellman, you take Schedules 3 and 4. We have just been discussing the net worth of Milton Olender in No. 3. Schedule 4 is disposition of cash in the safe deposit box. You started working on this case a few weeks ago, did you not, at my request? A. Yes, sir.

Q. And during that period of time did you go into where the funds came from and trace down through the banks the different investments, deposits by cash? Did you go through all the deposits

(Testimony of Roland D. Hellman.)

that were made by Milton Olender by cash into the store and personal accounts in the bank?

A. Into the cash—deposits into the personal account. The cash deposits in the store account are not questioned. [745]

Q. Now, this disposition of cash in the safe deposit box, you read the transcript in this case, did you not?      A. Yes, sir.

Q. Where you show cash coming into the account, into the safe deposit box, it is taken from the testimony that appears, or from the schedules and exhibits that appear here in Court as to cash gifts; is that so?

A. Yes, that is the additions they are speaking of.

Q. Yes.

Mr. Shelton: If your Honor please, I think counsel can make his questions less leading in form. He can say where did he get it, and lead the witness less.

The Court: Have the witness in a general way state the basis and effort he made, what he did.

A. The Schedules 3 and 3-A—in Schedule 3 we started with assets, net worth as presented by the Government in their findings, and that comes a little above the middle of the page.

Then the adjustments made are adjustments based upon additions that we have—that have been discussed and are in evidence here, with the exception of this first item, the cash in safe deposit box, for which there is another schedule, Schedule 4,

(Testimony of Roland D. Hellman.)

which I anticipate we will go through as we go along, and as we go along those items that are objected to, we can explain them.

The other changes is additions to the net worth at the [746] end of 1944. The purpose of this schedule is to show that at the end of 1944 Mr. Olender's net worth was \$51,992.99 more than the Government contends. Therefore, at the end of 1945 his net worth was \$11,042.97 more than the Government contends at the end of 1940; Mr. Olender's net worth——

Mr. Drewes (Interposing): If your Honor please, the witness is just reciting conclusions. I understood he was to explain the source of this information.

A. I was explaining what we contend it is I list here.

The Court: All right. This document is not in evidence, Mr. Witness. I asked counsel to lay the foundation for its introduction. Bear in mind the Government has just seen it today. I have just examined it. The Government has a right and privilege to object to the introduction of any or all documents, and I am going to give them that opportunity.

Meanwhile, we have to find out whether this matter should be in evidence, find out how it was made, what happened.

Q. (By Mr. Lewis): Mr. Hellman, without telling us just what each item is about, tell us where



(Testimony of Roland D. Hellman.)

you got the information for this net worth statement, first, except for the cash item.

A. Except for the cash item? The other three items appearing for the end of 1944 were taken from evidence, items appearing here in Court as having been introduced in evidence. [747]

Q. In other words, the testimony of the \$1,000 check that you explained today, December 23, not deposited until January 10th?

A. That's right.

Q. Mr. Hellman, now the next item is the Goodman suit transaction into banks, and it is based on your answer to the question you gave right after the noon recess? A. Yes, that is right.

Q. The other change in the starting period is based upon your analysis of the accounts payable with the Smith and Barney transactions this morning amounting to \$600,903.02, and you read the— did you read the testimony concerning the \$20,000 worth of what has been called in this trial "Mother's Bonds"? A. Yes.

Q. And that is the basis for one other adjustment from the Government's? A. Yes.

Q. Now, we come to Schedule 4. Your basis was, your basis for the starting point of May 5, 1944, the statement of the taxpayer, Milton Olender, certified by the affidavit of Judge Friedman?

Mr. Shelton: Your Honor—your Honor—

Mr. Lewis: I am showing the basis of the whole account and these figures. [748]

Mr. Drewes: I assume if he were asked such

(Testimony of Roland D. Hellman.)

questions he would adopt the statement of Mr. Lewis as his answer. The witness hasn't stated yet—at least I haven't heard it—what the basis of his calculations were.

Q. (By Mr. Lewis): All right, explain in general terms, then, what is the basis of the Schedule 4? How did you go about making up that schedule and from what information?

A. Well, there are various items on this schedule that came from different sources. For instance, the source of the balance in cash in the safe deposit box was taken from information introduced as evidence by Mr. Olender's testimony here. The admissions, the column entitled "Additions," heading on the left-hand side in the middle there, those were items that were also testified to by Mr. Olender. Three are substantiated by U. S. exhibits. The withdrawals——

Mr. Drewes: Your Honor, please, would you ask the witness to identify the three reported by U. S. exhibits?

A. U. S. Exhibit 1, referred to right on the schedule. July 5th, 1944, U. S. Exhibit 24, for one gift. December 15, U. S. 24, for \$1,000. January 7, 1945, U. S. Exhibit 24, for \$3,000.

Q. (By Mr. Lewis): Isn't it true you relied on Exhibit 24, Schedule A, as was shown in each of those additions?

A. Yes, that is part of U. S. 24.

Mr. Drewes: Those are not in evidence. [749]

A. That is Mr. Ringo's. That is the figure the

(Testimony of Roland D. Hellman.)

Government based the whole net worth computation on, with minor adjustments. That is Mr. Ringo's net worth statement.

Mr. Shelton: That is objected to, if your Honor please, as not responsive.

The Court: That may be stricken.

Mr. Shelton: May I make one statement, your Honor?

The Court: Yes.

Mr. Shelton: That is part of Exhibit 25, which went in for identification and which the Government did not offer in evidence.

Mr. Hagerty: The defendant testified on that exhibit on direct examination as he testified and discussed those figures as outlined in the Government exhibit, and this witness has read the transcript.

Mr. Lewis: It is at page 417 of the transcript.

A. Do you want me to proceed with this explanation? The column entitled "withdrawals," the items marked "transfer to personal bank account," the analysis was made of all deposits into Milton Olender's personal bank account, his personal commercial account, not for the store.

Q. (By Mr. Lewis): You made that yourself?

A. I made that. I went to the Bank of America and looked at the original deposit tickets for these three years. And items "cash deposited in his personal account" were [750] assumed to come from cash out of the safe deposit box.

In making a net worth statement of this type

(Testimony of Roland D. Hellman.)

where you cannot definitely establish the flow of funds, you couldn't say where this fund came from. We know it didn't come as withdrawals from his personal account. The records would be decreased. Since he had no other source of income and he did have cash in the safety deposit box, in making my statement—I know the Government agents themselves had their assumption it would have come from some source——

Mr. Shelton: I object to the statement there was no other source of income. There is no evidence to support that.

The Court: Sustained.

A. Then as you go on, other than the transfers——

Mr. Lewis: Now pardon me just a moment on that. I think, your Honor, it will be necessary at this time—I thought that Mr. Olender testified that outside of the sources of income shown on his tax return and the money in the box from his father, and from the rental properties, and the stocks and bonds shown and discussed here in this case, which he admittedly purchased, that he presented in there, that he had no other income from any other source than the Army & Navy Store. And if that is true, it must come from out of that box.

Now, if it comes from any other place and the Government [751] shows any other transaction where it came from, we are in a bad way in presenting this as I am relying on the fact that the gifts, as set out here; the real properties, as set out

(Testimony of Roland D. Hellman.)

here; the stocks and bonds, as set out in the stipulation, and so forth, and the Army & Navy Store, the gifts were the only source of funds available to the defendant except the money out of the box.

The Court: The only income that was referred to during the course of the trial was an item of \$1,800 in connection with the accounting services he rendered; \$25 he allegedly or assertedly received in connection with the preparation of income tax returns. I don't know of any other references.

Mr. Lewis: And that \$1,800 item, your Honor, was back in about 1942, or some place back there. It isn't in these years.

The Witness: I wonder if——

The Court: Well, let's proceed on that.

A. On that thought I might inject this, that any amount shown on this withdrawal column is detrimental to Mr. Olender. In fact, any reduction of cash in the box is taken adversely to him, because the more withdrawals, the less he has at the end of each year.

The Court: Where is the personal account to which you make reference? Where is that account? Do you have it?

A. Transferred to the personal bank [752] account?

The Court: Yes.

A. We have the bank statements.

The Court: Do you have the bank statements?

A. That is right, on total deposits. I went over and examined individual deposit tickets showing



(Testimony of Roland D. Hellman.)

the cash deposits. The tickets, deposits themselves, will merely show total deposits, which we do not do. I have examined the deposit tickets, also.

The Court: Is the personal account a subject of disbursements against it as well as deposits?

A. If there were checks, there would be disbursements. His personal account is very small. It is an average of four or five checks a month that are on it.

The Court: How far back did you examine it?

A. From 1944 through 1946.

The Court: The Government has had an opportunity to examine those accounts?

Mr. Shelton: If the Court please, I am advised by the agents they did not get all 1945 checks and they did not get, as I recall it, many of the 1944 checks.

The Court: All those items should be made available to the Government at this juncture. Every item upon which you base your calculations, or based any of your findings in the preparation of any document should be made available to the Government. That will be the order of the Court [753] at this juncture, that any matters upon which you may have based an arithmetical finding be made available——

A. All of them——

The Court: ——including checks, deposit receipts and the like.

A. I believe they have been available all along.

(Testimony of Roland D. Hellman.)

The Court: Counsel, I am merely responding in the light of what was said.

A. The other types of transactions are withdrawals, purchase of Treasury Department bonds——

The Court: Pardon me.

Mr. Shelton: May I at this time ask defense counsel if they would turn over to the Government such 1944 and 1945 personal checks of the defendant as they have?

Mr. Lewis: Yes.

The Court: Turn them over at the recess period.

A. Other items, purchase of United States——

The Court (Interposing): And transcripts of the bank accounts for those months and years; that is, the usual bank transcript.

A. "Purchase of U. S. Treasury Bonds." That item was per U. S. exhibit, couldn't be presumed to have come from savings from that savings deposit box.

The \$2,160 item is testified to by, in evidence, by Mr. Olender as having come out from the cash on hand in the [754] box.

The other items, "Purchase of cashier's checks," totaling \$15,000, testified to by Mr. Olender.

Other transfers to the personal bank account, purchase of U. S. Treasury bonds in cash. The trustee bank account set up as coming from the safe deposit box. Other transfers, transfer to Olender-McGrete bank account which Mr. Olender

(Testimony of Roland D. Hellman.)

testified to as coming from cash, safe deposit box.  
Transfer to personal bank account——

The Court: That would seem sufficient for commentation. Has the Government any questions to ask or submit in connection with this account at this juncture before I pass on the admissibility?

Mr. Drewes: No, we simply renew our objection, your Honor, that with respect to the—particularly with respect to the withdrawals from the deposit box, there is absolutely nothing in the record to support that.

The Court: We are not dealing with that exhibit. We are dealing with the other exhibit before we get to the matter of withdrawals from the box. May I see the withdrawals, please?

A. You don't have a copy?

The Court: No, I haven't.

Mr. Drewes: If your Honor shall refer to Schedule 3, I understand Schedule 4 [755] supports——

The Court: One is interwoven with the other.

Mr. Drewes: Precisely.

The Court: I agree with you on that score.

The Witness: Mr. Lewis, do you have another copy of No. 4?

Mr. Lewis: (Handing document to the witness.)

The Court: Well, let's take the very first item: "May 5th, cash in safe deposit box per count by Milton Olender and Monroe Friedman, \$75,000."

The very next item:

(Testimony of Roland D. Hellman.)

“May 5th, cash brought back from Texas trip, \$7,500.”

Then with the \$7,500 there is \$75,000?

A. That is correct.

Mr. Drewes: This Goodman transaction——

The Court: Just a minute. When he left to go on the Texas trip, he took \$7,500 from the \$75,000?

A. No, that was before the count. That is when accounting was made by Mr. Olender and Monroe Friedman together, because of the Texas trip.

The Court: I am not too sure the transcript will reflect it.

Mr. Drewes: I have two other points on that item. My recollection is, and I asked as to taking it out, my recollection is that he testified having taken five to ten thousand, of which [756] this would seem to be a compromise. I recall in his testimony he said he put it back.

The Court: No, this cash in safe deposit box finds only incomplete support from the record. Now, I haven't analyzed as yet, but there is the very first item. As I recall, the transcript does not support that item. At least, in my light and my recollection of the transcript.

Mr. Lewis: Your Honor——

The Court: I don't know how many other items will be reflected in the same fashion. Oh, you testify, Mr. Witness, that Schedule 3 and Schedule 4 are interwoven?

A. Yes, Schedule 3 refers to Schedule 4 in the computation. [757]

(Testimony of Roland D. Hellman.)

The Court: And the conclusions are based upon a composite of both Schedules 3 and 4; is that right?

A. Schedule 4 is part of Schedule 3, sir.

The Court: Yes. I think what we had better do, gentlemen, is attempt to analyze this situation. Here is a lengthy account of withdrawals from a safety deposit box. In the very nature of things, there was no running account kept by the defendant. At least there was nothing offered in evidence by him that he kept a running account of his transactions in and with the safe deposit box.

A. That is in the way you make up a net worth statement, go back and reconstruct—

The Court: Mr. Witness, please don't argue with me. I am trying my level best to analyze the situation. You have thrown at the Court—and I say "thrown" graciously—a multitude of statements. I am trying to rationalize it in my own humble way. I say that with abject humility.

I think I will adjourn the jury until Tuesday morning at 10 o'clock and thrash this matter out between counsel on both sides and see if we can arrive at some rationalization, because as it appears now, at least in whole or perhaps in part, I would have to sustain the objection of the Government to the introduction and that is all.

Now, it may be we can rationalize it.

Mr. Lewis: I think we can. I understand the Government [758] has many of those deposit slips under subpoena. They were subpoenaed today. I tried to get them, your Honor. The bank told me—



(Testimony of Roland D. Hellman.)

they gave me a long list, said, "We don't know whether this is what you want or not."

The Court: "September 23rd, 1943, down payment on furniture, W. & J. Sloane, \$1,000." Does that appear any place in the books of account?

A. No, there isn't.

The Court: Where did you get that figure?

A. That figure is based on information—I believe that is—

The Court: Where was the information received, and how was the information received, and where was the information received?

A. Listed as expenditure by Mr. Olender in the net worth statement.

The Court: Which net worth statement?

A. Do you have a copy of it, Mr. Lewis?

Mr. Drewes: That is included in the stipulation, your Honor, but that is not the objection.

The Court: All right.

Mr. Lewis: Your Honor, were you going to excuse the jury?

The Court: Just one second. The jury may be excused, then, until Tuesday at 10 o'clock, with the same admonition not to discuss the case under any circumstances, and not to form or express any opinion until the matter is submitted to you. [759]

A Juror: Your Honor, if he is going to read all of those figures, could the jury have a copy of it—I mean, next time?

The Court: Is the jury still present? May I ask them to remain momentarily?

(Testimony of Roland D. Hellman.)

The avowed purpose, ladies and gentlemen, of this recess is an attempt to define some of these mathematical drafts and documents referred to by the accountant, who is an expert in his field, for the purpose of admitting them in evidence. They are being subjected to scrutiny and test, and until such time as the Court determines there is a foundation for the introduction, they will have to await that period of time. So we will attempt to refine the matter.

Tuesday you may or may not receive them as a result of this conference.

(Thereupon, at the hour of 3 o'clock p.m., the jury left the Courtroom.)

The Court: Counsel, is the jury absent? Are we not approaching the matter of the introduction of Schedule 4 in a rather circuitous way? To this extent: I haven't had the benefit of the views of counsel for the Government nor the experts, and I can't examine each item. Merely from the collective picture that I get, at least in part there appears to be lack of support for certain of the items.

Now, would it not be advisable, as a basis for the introduction [760] of Schedule 4 and/or Schedule 3, or both of them, individually or collectively, to have the defendant take the stand in connection with certain things? Or has he taken the stand sufficiently to make this exhibit a credit?

Mr. Lewis: I think he has, your Honor, on all the additions to the cash. As to the withdrawals, you could present it in two ways. We could put the

(Testimony of Roland D. Hellman.)

additions to the cash and not put any withdrawal list and not present our schedule of net worth, just simply come out and say, "Fight all our items like Goodman's matter——"

The Court: Let's pause a moment and see if we can define our position. The Government is entitled to cross-examine on any or all of the items, aren't they?

Mr. Lewis: That is correct.

The Court: And now, in all the items upon which you predicate any of your arithmetical conclusions should be made the subject of investigation by the Government and the Court's scrutiny. Are there any items, counsel for the Government, here—and I would like your assistance as much as I can receive it in connection with tracing these problems out—are any items here to which objection is made?

Mr. Drewes: If your Honor please, from the viewpoint of the prosecution we would prefer to have the witness testify from the schedules and take them on cross-examination. As I understand it, this is a summary of his testimony. It isn't [761] evidence in the case.

The Court: Here we have a safe deposit box which evidences a basis for the defense in the compilation of net worth. The Government has a difference, a right at the very threshold of the figures, a difference of 23-odd thousand dollars. The Government takes the position that the starting figure was \$50,000, they had the amount in the safe deposit box.

(Testimony of Roland D. Hellman.)

Mr. Drewes: Correct.

The Court: The defense claims \$23,000 and some odd dollars. \$75,000 starting, then there being deductions here and there. Take that differential there, \$23,000. That is a very, very large figure.

Mr. Drewes: It is a very large figure.

The Court: How did the Government arrive at the figure of \$50,000?

Mr. Drewes: From the exhibits in evidence, information furnished by the defendant to his then accountant, Mr. Ringo, stating that as of that date he had \$50,000. It was to his best interest to make it as large as possible.

The Court: Yes, as a starting figure.

Mr. Drewes: As a starting figure.

The Court: On that little exhibit, in part at least, we find his handwriting.

Mr. Drewes: There are two exhibits. On one, yes.

The Court: All right, now, take up the first item, \$75,000. [762] May I have your assistance as we go along, counsel?

Mr. Drewes: Yes, your Honor.

The Court: As well as Mr. Shelton's. I may be incorrect in my recollection of the transcript, but my present recollection is that from the amount in the box the defendant withdrew some monies, \$7500; that then Monroe Friedman's name was transferred as one of the joint tenants on the box; then when the defendant returned from Texas, his name was

(Testimony of Roland D. Hellman.)

taken off the box. The affidavit in evidence shows there was account and accounting——

Mr. Shelton: \$70,000, plus, I believe—over \$70,000.

The Court: Certainly to the first item the defendant should be subjected to cross-examination and submit under oath to the basis on that score.

The next item, “June 16, Transfer to personal bank account, \$100.” That is a reconstruction, apparently. This gentleman states he examined the personal bank account and finds \$100 therein. And he says, ergo, the fact is that must come from the safe deposit box. Well, I don’t know anything about it at all, and I am not going to draw any such inference.

The Witness: It is that, or you have to leave it off.

The Court: I don’t think such an inference is either in keeping with the record or in keeping with the background of these events. There is an item of \$400, transferred to personal bank account. I assume the same situation prevails? [763]

The Witness: That is correct.

The Court: Well, another item, “\$1500 Transfer to personal bank account.” That finds its way into the bank account from, you claim, the safe deposit box?

The Witness: That is the only source.

The Court: That is the inference you draw.

The Witness: That’s right. It is an attempt to reconstruct——



(Testimony of Roland D. Hellman.)

The Court: Supposing—let's take this situation for the purpose of illustration: Supposing the defendant had transactions in his store of a cash nature during that period of time, and instead of depositing, let us say, \$1,000 in the bank account in the Bank of America or other store account as he may have, he puts the money in his personal account. Isn't that just as reasonable and fair to draw that inference as to draw the inference he got it from his safe deposit box?

The Witness: Yes, except that what happened to the \$75,000 he started with? Where did it go? It had to go some place?

The Court: Now, now, now. You assume he had \$75,000. For my purpose, and only for the purpose of dissecting this animal in front of me, I am not going to assume that. I am going to say you elevated your figure. I am not going to say he had \$75,000, but he had \$50,000, for the purpose of my discussion. Am I going to be committed—when I say "I," you [764] know I mean the Government—are they in a position where they would be foreclosed from attacking the figure?

Mr. Lewis: No, your Honor. I expect them to cross-examine about these figures.

The Court: No, I think I would be in palpable error if I permitted the introduction of the schedules offered on the record before me, Mr. Lewis.

Mr. Hagerty: If your Honor please—

The Court: Yes?

Mr. Hagerty: Yesterday on direct examination,

(Testimony of Roland D. Hellman.)

and I am looking for the testimony—his testimony was, “——

Mr. Shelton: What page, Mr. Hagerty? [765]

Mr. Hagerty: I will find it. I am looking for it. I started him with the Goodman transaction, at which time he went through \$20,550 and—that he bought cashier’s checks, on which there was some evidence, something brought up by the Government, and that was in January of ’44. Then he was going to go to San Antonio, Texas, apparently to see a silent partner, having in mind buying an Army and Navy Store stock. So he withdrew some money—he said between five and ten thousand dollars—from the bank, and then he decided to put Monroe Friedman on his box, and so he and Monroe Friedman made a count of the money in the box. The affidavit in reference to that count was made after he had drawn this figure between five and ten thousand dollars, he said on direct examination, to carry with him for this business transaction in Texas, which fell through because he got there too late or the stock was sold to somebody else.

Mr. Shelton: May I interrupt?

Mr. Hagerty: I am looking for that testimony. Just as soon as I find it I will give you the page number.

The Court: Maybe I am incorrect, there was a lot of testimony——

Mr. Hagerty: It is voluminous on the subject. It was difficult to get it all in, to keep it all in mind myself, and some of it went in on the redirect and

(Testimony of Roland D. Hellman.)

then some of it went in on the second redirect. I am just not too sure where [766] it is. I am having Mr. Lieberman help me locate it in the transcript.

Mr. Shelton: May I point out that the Friedman affidavit does not say this was Olender's money. He said he just counted it. Now there is one question that the Government is entitled to, I think, have the defense make proof on, that they rely on it, that that money in the safe deposit box was all Olender's money and it was not being held for anybody else.

Mr. Hagerty: He has testified to that already, many times in the transcript. I can cite you many pages of that, page 411, 415.

The Court: Let us take, Mr. Witness, December 31, balance of cash, \$10,000. What do you mean by that?

A. December 31 of what?

The Court: On the Schedule 4.

A. What year?

The Court: 1945, this \$10,000 item.

A. Transfer to personal bank account.

The Court: It says, "Balance of cash."

A. Balance of cash is the \$30,517 on the extreme right column. The three figures on the extreme right. There are four figures there. They represent the balances which again were—the top one is the balance as of May 5, 1944. Then we have December 3, 1944, balance of—the December [767] 31, 1945, balance; the December 31, 1946, balance.

The Court: I see. Now when you say "transfer

(Testimony of Roland D. Hellman.)

to personal bank account," again in similar fashion, you arrive at that conclusion or you draw that inference by comparing his personal bank account deposits, do you?

A. By looking at the personal bank account deposits, seeing a \$10,000 cash deposit.

The Court: Yes?

A. By checking his store records to see that he did not withdraw that from his store.

The Court: Yes?

A. By checking other sources of income to see that no such \$10,000 came in on or about that time.

The Court: Yes.

A. Where else could the cash come from?

The Court: Did you ask the defendant at any time where that cash came from?

A. Yes.

The Court: All right. Now, "May 1, 1946, transfer to personal bank account, \$6,000." "May 1st, 1946, transfer to Olender-McGrete bank account, \$570.38."

Who is McGrete?

A. That is a venture that Mr. Olender was going to go into and they were to put up this money in a separate bank account and the venture fell [768] through.

The Court: Have we heard of a McGrete at any time before in this case?

A. There has been——

The Court: This is the first time I have heard of McGrete. Is that correct?

(Testimony of Roland D. Hellman.)

Mr. Lewis: I don't think that any evidence has been introduced, your Honor, as to it.

The Court: Don't you think we are entitled to go into those matters? I think so.

Mr. Lewis: Well, it is just an asset that disappeared by the time of the end of the year and under the net worth system——

The Court: If I permitted this type of examination and the introduction of this type of exhibit, I would foreclose the opposition, whether you be in the position of the opposition or not, Mr. Lewis, of examining on the items, because this man would merely say: "Well, I drew this inference," and reconstruct it. Now, there is no occasion for hypothetical reconstruction, when the defendant himself is available and when his bookkeeper, who functioned for him, is likewise available. I think we are dealing in a phantom situation here, when in truth and in fact, the witnesses are available. Therefore, it is my ruling, I shall sustain objections by the Government to Schedules 3 and 4, when and if they are posed formally, lest and until there be a basis for the [769] introduction of such exhibits through the medium of Mr. Olender taking the stand and testifying as to the items which may not have been testified to heretofore.

Mr. Hagerty: Then we will put the defendant on the first thing Tuesday and establish the record.

The Court: Are there any other matters, gentlemen, now before the Court either from the defense's view or the Government's?



(Testimony of Roland D. Hellman.)

Mr. Drewes: No other matter, your Honor.

The Court: Now, on the trusteeships, Milton Olender, trustee. Will you refresh the Court as to the basis of the trusteeship and what the background is?

Mr. Lewis: Oh, that was way back in the early days where Mr. Olender was a trustee for certain real properties of the family in Fresno. Of course we are dealing in this net worth statement with the \$15,000 trustee's funds that come into the net worth in one of these years.

The Court: Why and under what circumstances were these three \$5,000 items withdrawn and deposited in the trustee savings account?

Mr. Lewis: Well, that goes right into net worth. They appear on the trustee's savings account as an asset of Mr. Olender, making up part of his net worth.

Mr. Shelton: But that doesn't establish the source, your Honor. [770]

The Court: The question naturally that arises in the light of the first question I pose, the next question is, how much of that alleged \$75,000 or \$73,000 or \$70,000 or \$50,000 was trustee money?

Mr. Lewis: Well, as a matter of fact, he had absolute control over it. I don't think he even told the children about it. And he——

The Court: Was he a self-constituted trustee?

Mr. Lewis: Yes.

The Court: What was the nature of the trust, what was the declaration of trust?

(Testimony of Roland D. Hellman.)

Mr. Lewis: There are none. Just Milton Olender, trustee, for the respective three children on the bank statement. It was just a trustee bank account.

The Court: I see. James Harold Olender is the son by the former marriage, is he?

The Defendant: That is my son.

Mr. Lewis: That is his son.

The Court: His son. And Richard Raymond Busby, is the young man who—

Mr. Lewis: Yes, stepson.

The Court: And Audrey Elaine Olender is the daughter?

Mr. Lewis: Daughter.

The Court: Daughter.

Mr. Lewis: Your Honor, I think a lot of these things— [771]

The Court: “Purchase of merchandise for store by cash—Barney, \$2,160.03,” we made reference to that transaction, one of those account payable items.

The Witness: That’s right.

The Court: Yes.

Mr. Hagerty: Your Honor, on page 356 of the transcript I found the San Antonio trip, line 6. I asked him the question:

“Q. Had you taken any currency out of this box in preparation for the trip”——

That is the Texas trip——

“——before you brought Monroe Friedman to look at and examine the contents of the box?

“A. I did.

“Q. How much had you taken out then?

(Testimony of Roland D. Hellman.)

“A. Somewhere between five and ten thousand dollars. I don’t remember the exact amount.

“Q. And it is your testimony that you were taking that sum with you and if you needed more you would send to Monroe Friedman to get it from the box?      A. That’s it.

“Q. Now, this was in about April of 1944, is that true?      A. Yes.” [772]

The Court: Then my recollection is incorrect.

Mr. Hagerty: Well, it is an involved set of facts. It is complicated. But I had tried on direct examination to establish how much he had in that box at approximately the first of the year, 1944, and it was in excess of——

Mr. Drewes: Where did he put it back?

Mr. Hagerty: What?

Mr. Drewes: Where did he put it back, Mr. Hagerty?

Mr. Hagerty: If he says he put it back. Maybe I didn’t bring that out.

The Court: I think now the interval of time may be a fortuitous one in the sense that——

Mr. Lewis: I would like to read that transcript myself, your Honor, before midnight.

The Court: ——of possibly clarifying the record for the Jury and the Court. Here is an illustration wherein apparently my recollection is not as good as the transcript and also it will give counsel and the technicians, the experts, an opportunity to go over the invoices on the purchases and prepare themselves for Tuesday, at which time I expect that

(Testimony of Roland D. Hellman.)

the defendant will take the stand in connection with the basis or predicate for the possible introduction into evidence of Schedules 3, 4.

Mr. Lewis: Yes, sir.

The Court: May I see No. 4, please? No. 4 is the— [773] No. 3 is the—you finally arrive at the position that the defendant overpaid his tax?

Mr. Lewis: Yes.

The Court: In each year?

Mr. Lewis: Yes, your Honor.

The Witness: Yes. Based upon net worth, sir.

Mr. Lewis: Based upon a net worth.

You have Schedule 3?

The Court: Schedule 3, 3-A.

May I see the affidavit of Monroe Friedman?

You have a starting differential right at the “balance of cash, \$73,539.97.”

Mr. Hagerty: Yes.

Mr. Shelton: Your Honor, it might shorten—

The Court: Here is the subject matter of that paragraph (referring to defendant's Exhibit D, affidavit of Monroe Friedman):

“That on April 22, 1944, I met Olender by appointment at the Bank of America, National Trust & Savings Association, 12th Street and Broadway, Oakland, California; that on that day, safe deposit box No. 56 in said bank was transferred from the names of Milton Olender and his wife to the names of Milton Olender and Monroe Friedman; that I went in with him to look at the safe deposit [774] box itself; that Olender opened it in my presence;

(Testimony of Roland D. Hellman.)

that there were several papers and some bonds in the box, and also over \$70,000 in United States currency; that Olender gave me the key to said box.

“That on May 5, 1944, after Olender had returned from Texas, I again met him at the same bank by appointment, and the same safe deposit box was transferred back to the names of Mr. and Mrs. Milton Olender; that on that day, Olender opened the said box in my presence, and the contents were the same as on April 22, 1944.”

We will adjourn until Tuesday at ten o'clock, unless there be some other matters.

The Witness: I have a question, your Honor. Regarding the checking of the invoices, the Government agents and myself intend to come in Monday morning. I wonder if the Court could order that the evidence, Mr. Olender's books, be here so that we could check them.

And also in checking the books, in checking off which invoices we have and which ones we don't have, would it be proper to make small red tick marks in that book for our auditing purposes?

The Court: There is no objection.

The Witness: We intend to be here at 9 o'clock Monday morning. [775]

The Court: Make it 9:30. The Clerk has many duties here. 9:30.

The Clerk: I will have them available Monday morning.

The Court: Now the Government has a copy of Schedules 3, 3-A and 4?



(Testimony of Roland D. Hellman.)

Mr. Drewes: We do, your Honor.

The Court: We will adjourn until Monday, at ten o'clock.

(Thereupon an adjournment was taken in this matter until ten o'clock Tuesday, September 30th, 1952.) [776]

September 30, 1952—10:00 A.M.

The Clerk: United States vs. Olender, on trial.

Mr. Hagerty: At this time, if your Honor please, in order to further qualify the statistical studies made by the accountant, we ask permission to withdraw the accountant from the stand and put the defendant back on the stand.

The Court: Is it stipulated that the jury is present?

Mr. Hagerty: So stipulated.

Mr. Drewes: So stipulated, your Honor.

If your Honor please, before that is done, counsel for the defendant has just before your Honor took the bench handed us revised schedules. The prosecution would ask that we have a recess at this time, a short recess, to give us an opportunity to study these revised schedules before further testimony is taken. We had no opportunity to compare them with those which were earlier served upon us.

The Court: Are there radical changes? I mean by radical changes, in the sense——

Mr. Hagerty: I don't believe that there is. We have been pursuing our studies and digging through

(Testimony of Roland D. Hellman.)

old invoices all the time. We find that there is some adjustment to be made. Mr. Lewis, I think he would be better qualified to state this than I.

Mr. Drewes: We really feel we should have 10 or 15 [777] minutes to compare these before any further testimony is taken.

The Court: If I had known I would not have called the Jury in. Now we have to send them back.

Mr. Drewes: The Clerk was out of the Court, your Honor. The revised schedules, your Honor, for the record, are No. 3, 3-A and 4.

Mr. Hagerty: We have produced, your Honor, bank statements and checks and so forth and they are now turned over to the Government.

The Court: The Jury has heard the discussion between Court and counsel, and under the circumstances I will accede to the request of Government counsel and an interval of time will be permitted to study these.

What are they, amended schedules?

Mr. Lewis: Yes, your Honor. And there also have been put in two or three items. In reading the long transcript over the week end, I notice that two items—your Honor called attention to one—were not—

The Court: I am on schedule 3. The only changes are in the adjustments under the additions in the safe deposit box, apparently of any radical nature. Schedule 3-A—

All right. I will allow an interval of time in which to examine these.

The Jury is excused. [778]

(Thereupon a short recess was taken.)

MILTON H. OLENDER

resumed the stand, and having been previously duly sworn, testified further as follows:

The Clerk: Mr. Olender, will you please restate your name for the record?

A. Milton Howard Olender.

Redirect Examination

(Resumed)

By Mr. Hagerty:

Q. Mr. Olender, would you tell his Honor and the ladies and gentlemen of the Jury what your sources of income and/or funds were during the time in question under this indictment?

Mr. Shelton: Objected to, if your Honor please, on the ground that the foundation has not been laid by showing what documentary evidence is available on the subject before the witness is asked this broad oral question, what documentary evidence has been produced and is available before——

The Court: The question is preliminary. You may answer.

A. What was that question again?

Q. (By Mr. Hagerty): What were your sources of income during the period 1945 and '46, or 1944, the base year?

(Testimony of Milton H. Olender.)

A. Well, first, of course, was from the Army & Navy Store, my business; and, secondly, the income from my [779] rental property in Fresno; and then there was, third, the income from stocks and bonds listed in Mr. Ringo's net worth statement; and, fourth, the gifts and such from my mother; and also the money entrusted to me by Mrs. Foote; and then lastly, my safe deposit box.

Q. And if you dealt in any cash transactions during this period of time, where would the cash come from?

A. Well, it would either have to come from my accounts, my bank accounts, or in the event it did not come from there it would have to come from my safe deposit box.

Q. In the course of your books there is indication that you had an account known as the Olender-McGrete account?

A. Yes, sir.

Q. Would you tell his Honor and the ladies and gentlemen of the Jury what that account was about?

A. I believe the year was 1945, Mr. McGrete and his wife were very close personal friends of Mrs. Olender and me, and he wanted to open a race track at Pacheco, which has since been opened and has been operating ever since.

Q. Where is Pacheco?

A. It is right out of Concord in Contra Costa County.

And he didn't have the funds, but he was always a race enthusiast. In fact, he was a motorboat champion.

(Testimony of Milton H. Olender.)

And he asked me if I wouldn't invest the funds and go in on a fifty-fifty basis with him on this particular thing. [780]

So I advanced the sum of \$5,000, which I withdrew from my safe deposit box, and opened the account.

Shortly thereafter, due to the fact that he had a young son who wanted to run the thing and tried to tell me how to run my own business and to leave it and go out there——

Q. In other words, friction developed?

A. Friction developed.

Q. Then what happened?

A. We decided to dissolve the partnership.

In the meantime, Mr. McGrete had used at my—I had signed the checks, about three checks totalling something over \$700, which had come out of the account.

Mr. Shelton: Just a minute. Your Honor, if they are going to prove the exact amount of that—are the checks available rather than the oral statement of the witness?

A. Yes.

Mr. Hagerty: You have seen them already.

The Court: Are you leading to an item in the account?

Mr. Hagerty: Yes, your Honor, explaining one of the accounts in the schedule.

Q. At this time, Mr. Olender, I will show you three bank statements, a bank book, a deposit slip,



(Testimony of Milton H. Olender.)

four checks and a quitclaim release and ask you if you recognize them?      A. I do.

Q. What are they? [781]

A. Well, the checks are checks signed by me during the course of this account.

Q. In other words, it would be fair to say, Mr. Olender, that those are the entire documents representing the date of the Olender-McGrete deal?

A. They are?

Q. Which was this proposed investment in a race track, from which you withdrew after certain disagreements developed?      A. That's correct.

Q. Is the quitclaim release signed by you and Mr. McGrete?

A. It is my signature, and I am quite sure it is Mr. McGrete's or I wouldn't have accepted it.

Mr. Hagerty: At this time, if your Honor please, I would offer this group of documents in evidence as the defense's next exhibit.

The Court: Counsel, you have examined it?

Mr. Hagerty: Yes, they have.

The Court: It may be marked.

The Clerk: As one exhibit?

Mr. Hagerty: I think that would be best.

The Clerk: Defendant's collective Exhibit AB in evidence.

(The group of documents consisting of three bank statements, a bank book, a deposit slip, four checks, and [782] a quitclaim release were received in evidence and marked Defendant's Exhibit AB.)

(Testimony of Milton H. Olender.)

Q. (By Mr. Hagerty): Now, Mr. Olender, did you draw a final check of \$5,000 to clear this account? A. I did.

Q. And that check was made payable to whom?

A. The Asturias Export and Import Company.

Q. And will you explain that transaction to his Honor and the ladies and gentlemen of the Jury?

A. Well, when the account was reconciled and Mr. McGrete had returned the funds to me which I had laid out, the account was still \$5,000, and I then invested that \$5,000, closing out of the Olender and McGrete account, into the Asturias Export and Import Company, and bought the original \$5,000 of stock.

Q. And is that the transaction that you deemed to be worthless stock when you discussed it with Ringo?

Mr. Shelton: Objected to, your Honor, on the ground it calls for the conclusion of the witness as to what was worthless. There has been extensive testimony in the record as to whether or not it was worthless at the end of the year '46, which is the period involved in this indictment.

Mr. Hagerty: The purpose of my question, your Honor, is merely to bring to the presence of the Jury a fixing point as to this transaction and relating it to the Asturias [783] transaction.

Mr. Shelton: But, if your Honor please, he is asking the witness for his conclusion about something which is a matter of law as to whether or not it was worthless at the time.

(Testimony of Milton H. Olender.)

Mr. Hagerty: Well, the record is filled with conclusions as to the value of the Asturias stock pro and con, your Honor.

I was merely trying to fix this transaction in reference to the entire case for the convenience of the Jury.

The Court: The objection is overruled.

A. What was your question, Mr. Hagerty?

Mr. Hagerty: I will withdraw it and reframe it.

Q. Mr. Olender, this \$5,000 check which you drew payable to the Asturias Corporation, which cleared the Olender-McGrete account, that was the investment and securities which you later deemed worthless?      A. Yes.

Q. Is that correct?      A. Yes.

Mr. Hagerty: At this time——

The Court: Which he claims it to be worthless. That is his claim.

Mr. Hagerty: He claims it to be worthless.

The Court: All right. [784]

Mr. Hagerty: At this time, if your Honor please, I would like to pass this to the Jury so that they may see it.

(Defendant's Exhibit AB passed to the Jury.)

Mr. Hagerty: At this time, your Honor, in order to expedite the matter, I will ask him to identify some documents while the Jury is looking at that exhibit.

Q. (By Mr. Hagerty): Mr. Olender, I show

(Testimony of Milton H. Olender.)

you a sheaf of bank statements and ask you if you can identify them?

A. Yes, sir, they are my personal commercial account bank statements.

Mr. Hagerty: At this time, if your Honor please, I ask that they be offered in evidence as the next exhibit of the defendant's. The Government counsel has already seen all these things.

Mr. Shelton: If your Honor please, may I ask a question or two on voir dire?

The Court: Yes.

Q. (By Mr. Shelton): Mr. Olender, what period is covered by these bank statements that your counsel has just showed you?

A. I didn't look at the period. Hand them up and I will tell you.

Mr. Shelton: May I approach the witness?

The Court: Yes. [785]

A. I assume they are in order, Mr. Shelton.

Q. (By Mr. Shelton): I didn't change them, Mr. Olender.

A. Well, I don't know.

Mr. Hagerty: Well, in the interests of time, they run from '44 to the end of '46, the first part of '47.

A. They start as of December 31, 1943, I presume. The next item is January 14, 1944, and they end with January 29, 1947.

Q. (By Mr. Shelton): Mr. Olender, have you checked them to see that they are a complete ledger record of the account for that period?

A. No, sir, I hadn't—

Mr. Shelton: If your Honor please, before they

(Testimony of Milton H. Olender.)

are offered in evidence we would like to be sure they are a complete record.

The Court: Do they run in sequence?

A. I believe they do.

Mr. Hagerty: Yes.

The Court: Well, if there be any discrepancies you will supplement this offer by another offer, if demand by the Government?

Mr. Hagerty: We will render everything that we can, your Honor. I think if there are any discrepancies he can clear them up on cross-examination.

The Court: All right. [786]

Mr. Shelton: One further question.

Q. Was this the only personal bank account you had during that period, Mr. Olender?

A. No, sir, it was not.

Mr. Hagerty: We will explain that more in detail as we go along.

The Court: All right.

Mr. Hagerty: And here are some checks, Mr. Olender (handing to the witness).

The Court: They may be marked.

The Clerk: Defendant's Exhibit AC in evidence.

(Thereupon group of bank statements were received in evidence and marked Defendant's Exhibit AC.)

Q. (By Mr. Hagerty): I hand you a group of checks and a group of deposit slips. Can you identify them?



(Testimony of Milton H. Olender.)

A. Well, the checks are checks from my personal commercial account. The deposit slips are deposit slips from my commercial account.

Mr. Hagerty: At this time we will offer these in evidence as defendant's next exhibit.

Mr. Shelton: If your Honor please, I would like to ask a couple of questions on voir dire?

The Court: Yes.

Q. (By Mr. Shelton): Mr. Olender, I will ask you what period of time is covered by this series of checks? [787]

A. I assume these are in order, Mr. Shelton. I do not know if they are in order. The first one starts at February 23, 1944, and the last one is December 12, 1946.

Q. On what account are they drawn, Mr. Olender? A. Milton H. Olender account.

Q. Is that the personal account?

A. That is my personal account.

The Court: Pardon me. Offer that juror a drink of water.

All right.

Mr. Shelton: I will ask you whether or not those are all the checks on that bank account during that period?

A. I do not believe they are all of them. There may be one or two missing.

Q. Are there more than two checks missing?

A. I wouldn't know how many are missing.

Q. Well, did you make any effort to determine,

(Testimony of Milton H. Olender.)

Mr. Olender, how complete that check list is or did you just bring in some checks?

A. I gave all the checks that I have to my accountants and my attorneys.

Q. And you don't know how many checks for that period are missing? A. No, I don't.

Q. Do you have any other checks on that account during that [788] period which you did not produce here in Court?

A. I have no checks of any kind that I know where they are.

The Court: Pardon me. Just a minute. May I address the juror? Counsel, may I interrupt you momentarily?

Madame, have you been suffering from a severe cold?

A Juror: I caught a cold Friday.

The Court: I think under the circumstances, with the stipulation of counsel, this juror may be excused. She is suffering with a severe cold.

Would you like to be excused from this jury?

A Juror: I would like to.

The Court: Apparently she is not well.

Mr. Drewes: No objection.

Mr. Hagerty: We will so stipulate.

The Court: It is discomfoting to her as well as the other jurors. And with the stipulation of counsel, this juror may now be excused from further attendance in the trial of this case.

The alternate juror—there is one alternate juror remaining. Where is the alternate juror? The alter-

(Testimony of Milton H. Olender.)

nate juror may now take the place of the juror who is being excused by stipulation.

Q. (By Mr. Shelton): Mr. Olender, have you produced here this morning and identified the ledger account which would reflect checks cashed during the period covered by that group [789] of checks?

A. Do you mean those papers I just handed to the Judge?

Q. I mean the ledger account, Mr. Olender. You know what a ledger account is, do you not?

A. I know——

Mr. Hagerty: He is arguing with the witness.

He is referring to these. Are these bank statements covering those checks?

A. That is what you are referring to, Mr. Shelton?

Mr. Shelton: I am referring to this exhibit, Mr. Olender, which I hand you, a group of bank ledgers. Do you identify those? You identified those this morning.

A. I identified them as my bank account.

Q. Well, as your bank ledgers then?

A. Yes, sir.

Q. Before coming to Court did you make any effort to check that ledger record against the checks to see how many checks were shown on the ledger which were not produced here as checks?

A. Not to my knowledge.

Q. So you don't know how many of the checks which are shown by the ledger to have been drawn were not produced here this morning?

(Testimony of Milton H. Olender.)

A. No, I don't.

Q. Mr. Olender, I also show you a group of deposit tickets [790] and ask you whether or not those deposit tickets relate to the ledger record which is here before you? A. I believe that they do.

Q. I will ask you whether or not if before coming to Court you made any check to determine whether the deposit slips produced there account for the deposits shown on those ledger sheets?

Mr. Hagerty: If your Honor please, I feel this is a matter of cross-examination.

Mr. Shelton: Before——

Mr. Hagerty: Mr. Olender has produced for us the records that he could find. Mr. Olender first turned those records to the Government agents more than five years ago.

Mr. Shelton: When——

Mr. Hagerty: He then turned them to the accountant by the name of Ringo. He then turned them to other attorneys—I think there were two sets of attorneys and accountants before we came in the case. If there are any missing——

The Court: Have they remained intact?

A. I do not believe so. There are some missing that I gave them. You see, I had started with——

Mr. Shelton: If your Honor please, first, we expect to offer evidence from the agents that some of those checks which are produced have never been shown to the Government agents at any time, and, in the second place, if your Honor [791] please, we respectfully submit that we are entitled to show

(Testimony of Milton H. Olender.)

whether the record is complete before it is admitted into evidence.

The Court: Well, it is a prima facie showing, I take it?

Mr. Hagerty: Yes.

The Court: It is sufficient to make——

Mr. Hagerty: Yes——

The Court: It is difficult for us both to speak at once.

Mr. Hagerty: I am sorry.

The Court: I think there is sufficient to permit their introduction. If there be discrepancies or omissions or exceptions of any kind, it may be developed on cross-examination.

Now what is your theory upon which you offer these documents, what is the basis?

Mr. Hagerty: We are accounting for funds in and out of the safety deposit box, transactions in cash that he had, various transactions connected with his business.

The Court: And this will lead up to the schedules which you are——

Mr. Hagerty: Yes, your Honor. These will qualify the schedule.

The Court: On that representation they may be admitted. [792]

The Clerk: Defendant's collective Exhibits AD and AE.

(Thereupon the checks and deposit slips were received in evidence and marked, respectively, defendant's Exhibits AD and AE.)



(Testimony of Milton H. Olender.)

Q. (By Mr. Hagerty): At this time, Mr. Olender, I show you three deposit slips on the Bank of America in the name of Olender and Elkus by Milton Olender, and ask you if you can identify them? A. Yes, sir.

Q. Can you explain the account that they are deposits on?

A. Well, this is another personal account of mine set up, I believe, early in '41 or '42, in which Mr. Elkus, who is the—one of the part owners of Money Back Smith in Oakland, brought to me on two occasions two very large Government deals. They were sales to the United States Government, as I remember them—my figures may not be correct—totalling, one, \$18,000, and the other one some nine, ten, or eleven thousand dollars, and Smith's being—

Mr. Shelton: Just a minute, Mr. Olender.

If your Honor please, these long recitals don't make—

The Court: In any event, the moneys finally wound their way into your account?

A. They were always my account. Mr. Elkus never had anything to do with it.

The Court: That explains it all right. [793]

Q. (By Mr. Hagerty): Now, do you still have that account in the name of Olender-Elkus?

A. No, sir, it was closed out. The funds were transferred to my commercial account.

Q. When was it closed out?

A. I am not sure of the year. Perhaps—

Q. Approximately?

(Testimony of Milton H. Olender.)

A. Perhaps 1946, I believe.

Q. When was the last transaction in this account that you and Mr. Elkus had?

Mr. Shelton: Objected to—

Mr. Hagerty: Approximately.

Mr. Shelton: Objected to, if your Honor please, on the ground that the record of the account would be the best evidence.

The Court: Well, if he had an independent recollection—you may answer.

A. I am not sure, your Honor. He is correct in that. It shows in the account there.

Q. (By Mr. Hagerty): I will ask you this: During the years 1945 and '46, which are under question in this indictment, did you have any transactions—

A. Practically none.

Q. —through this account?

A. Practically none. [794]

Mr. Hagerty: At this time I offer these deposit slips in evidence.

The Court: They may be marked.

The Clerk: Defendant's Exhibit AF in evidence.

(Thereupon deposit slips were received in evidence and marked defendant's Exhibit AF.)

Q. (By Mr. Hagerty): At this time, Mr. Olender, I show you three deposit slips, savings account deposit slips on the Bank of America in Oakland and ask you if you can identify them?

A. They are the opening deposit slips for the

(Testimony of Milton H. Olender.)

three trustee accounts in my name for my three children.

Mr. Hagerty: At this time, if your Honor please, I would like to offer these in evidence.

Mr. Shelton: May I see them first?

Mr. Hagerty: Yes. I had already shown them to the Government counsel.

Mr. Shelton: No objection, your Honor.

The Court: They may be marked.

The Clerk: Defendant's Exhibit AG in evidence.

(Thereupon deposits slips were received in evidence and marked defendant's Exhibit AG.)

Q. (By Mr. Hagerty): Now, is it a fair statement, Mr. Olender, to say that these deposit slips represent deposits of \$5,000 each in trustee accounts for your three children whose [795] names are Audrey Elaine Olender, your stepson, Richard Raymond Busby, and your son, James Harold Olender?

A. Yes, sir.

Q. That represents a total deposit of \$15,000?

A. That is correct.

Q. Where did you get that money?

A. Out of my safe deposit box.

Q. The date of the deposit, in each instance, was November 20, 1945? A. I believe so.

Q. Now, Mr. Olender, you spoke of receiving rents from the Fresno property. At what period of the year would you generally receive these sums?

A. Usually, I believe, in almost every instance,

(Testimony of Milton H. Olender.)

with perhaps one or two exceptions, the beginning of the next year, the early part of January.

Q. Now, I show you Government's Exhibits No. 1 and No. 9, which are your individual income tax returns for the years 1945 and 1944, and ask you if there is any indication thereon where you report this rental income from the Fresno properties?

A. Well, on the 1945 return, which I have, I show a total income to me, less depreciation and taxes, of \$1,150.11.

Q. And that is for what period?

A. The year 1945 to January 1st, 1946.

Q. And then will you tell us whether you have a related [796] item in the earlier return, the one for 1944, Government Exhibit No. 1, I believe it is, or No. 9?

A. Yes, in 1944 I show a net return after depreciation and taxes of \$1,232.46.

Q. In what form did you receive these moneys?

A. Nearly always—I am not positive of this—but nearly always in cash. There may have been a cashier's check in there at one time or another. I am not sure.

Q. And then what would you do with these moneys?

A. Well, I would either deposit it in my personal account—to the best of my recollection I did not. I put it in my safe deposit box.

Q. As cash?           A. As cash, yes.

Q. Now, during the years 1944 and '45, did you receive any gifts from your mother?

(Testimony of Milton H. Olender.)

A. I believe I did. They are scheduled in Mr. Ringo's net worth statement.

Q. In what form were they?

A. They were usually currency and perhaps an occasional cashier's check.

Q. And in the event it was a cashier's check, what would you do with it?

A. I would have cashed it and put the funds in my safe deposit box. [797]

Q. Now, in these rents that you spoke of, was that a gross amount plus the—that is, including the depreciation item?

A. Well, that figure which I quoted was not my actual income. The money I received actually—I received that \$1,100 plus some \$500 of depreciation, which would make my total about \$1,600 or \$1,700.

Q. Would that be true in each year?

A. Yes, in every year.

Q. Now, you have outlined to us your sources of income in this period of time, that is, from your business, from the rentals, and the gifts and these other items, stocks, gifts from your mother, and your cash in the safe deposit box. Did you have any other sources of income?

A. None whatsoever.

Q. Now, you have testified, I believe, earlier, that in the case of the sales of some of these suits, that is, through Mr. Leavy and also the Lerman sale, you received certain amounts of cash; is that true?

A. Yes.

Q. What did you do with that cash?



(Testimony of Milton H. Olender.)

A. I believe that was deposited—part of it—of course the Lerman transaction—in my business and ultimately the Saraga money in my personal account.

Q. In this period of time if you had any cash or were handling any cash transaction, where would you get the cash? [798]

A. Well, it either had to come out of my personal account or out of my safe deposit box.

Q. How about your store? Did you ever draw cash from the store?

A. On my store account also, yes.

Q. Now, directing your attention to the time—some time in 1944, probably April or May, when you made a trip to San Antonio, Texas. You have stated hitherto that you withdrew certain funds from your safe deposit box before you put Judge Monroe Friedman's name on that box as a co-tenant and before you made the count of the funds with him. Do you have in mind how much you withdrew at that time?

A. Well, it was between five and ten thousand dollars. I am not sure of the sum.

Q. Now, you have also stated that that contemplated business transaction in San Antonio did not materialize?           A. That's correct.

Q. What did you do with that money?

A. When I returned and after Mr. Friedman had checked the cash with me in the box, I placed it back in the box.

Q. In other words, would it be a fair statement

(Testimony of Milton H. Olender.)

that you used your safe deposit box as a depository for your personal funds as contrasted with your store funds?      A. That's correct.

Q. That you had in the business? [799]

A. Yes.

Q. Well, then, to summarize, Mr. Olender, you stated that you had the income from your business, and an income from securities, and rentals and so forth, and gifts from your mother and such transactions. Will you tell us, trace funds for us? What would you do with the funds? Can you hear me?

A. Not very well.

Q. Let me withdraw and let me say this: The cash funds you received you have testified were put in your safety deposit box, is that right?

A. That is correct.

Q. Then, of course, you had certain amounts of cash in your business, is that true?

A. That is correct.

Q. And after these funds had arrived in your box or your business that was the sole source of your cash funds and/or business transactions; is that right?      A. That is right.

Q. During the war years, Mr. Olender, did you have the same sources of supply of merchandise as you had had in the pre-war years?

Mr. Shelton: If your Honor please, that is objected to as, first, immaterial, and, second, meaningless, if true, because it goes back into a period before this case and unrelated [800] to this case.

Mr. Hagerty: It is preliminary, your Honor, and

(Testimony of Milton H. Olender.)

ties in with cross-examination that was had of this defendant by Government counsel which will be apparently in the next question.

The Court: All right, overruled.

A. Well, I had difficulty, as you know, buying sailor suits and I bought them wherever I could. I found many suppliers that would sell me ten, fifteen or twenty at a time, and I believe that in the course of this period that I had between five and ten such sources. Some of them were a single transaction, some of them were as many as eight, ten or twelve transactions.

Q. On cross-examination the other day Mr. Drewes asked you if you knew a man by the name of Asman?      A. I believe he did.

Q. Did you know him?

A. When Mr. Drewes asked me that question, I believe my answer was, "The name doesn't register." But in checking through our bills a couple of days ago at the request of the Government, I discovered one invoice which has a notation on it, "Joe Asman, paid by check," such and such a number, for about one hundred suits. Mr. Asman was in ill health and was going out of business and came to me, and I purchased those suits from him. That was the only transaction I have [801] ever had with Mr. Asman before or since in my recollection. I might have had more, but Mr. Asman died of his illness a short time thereafter.

Q. When did you learn that?

A. Yesterday.

(Testimony of Milton H. Olender.)

Q. Why did you learn it?

A. I asked Mike, who testified the other day, if he knew what had happened. Asman was a competitor of Mike's and he checked up and found out the man had passed away about 1946 or '7.

Q. Why did you make the inquiry at all?

Mr. Drewes: I will object to further testimony on this point. It is immaterial.

Mr. Hagerty: I just wanted to point it out.

The Court: I think we understand. The gentleman passed away, sold his merchandise.

Q. (By Mr. Hagerty): Had you ever known Asman before this single transaction? A. No.

Q. Did you know anything about his ill health?

A. Not until he came to me.

Q. In your dealings with Mr. Ringo I believe you gave certain information upon a proposed net worth—or an attempted net worth statement was compiled? A. That is correct. [802]

Q. Did you give him information about a purchase of bonds in the year 1944 in the approximate amount of \$8,000? A. I believe that I did.

Q. Do you recall where those funds came from?

A. They came out of my safe deposit box.

Q. You have testified here about certain purchases from a man by the name of Barney in Los Angeles? A. Yes, sir.

Q. I believe we have certain exhibits in evidence in connection therewith. Where did you get the funds for those purchases?

A. I believe out of my safe deposit box.

(Testimony of Milton H. Olender.)

Q. Now, you testified you made a purchase of bonds, approximately \$20,000 worth for your mother?

A. Yes, sir.

Q. Did you ever report as income on your returns at any time the interest on those bonds?

A. I believe I did in the year 1947.

Q. Who reported the interest as income in 1946, if you know?

A. My mother.

Q. Why did you report it differently in 1947?

A. Well, I had collected that interest in Oakland and my mother told me to keep it, said, "You can have it," and I assumed—evidently wrongly, now—that that money was to [803] be reported by the person who got it, not the person who had the bonds, and I received the money, deposited it, and the records show I deposited it in my personal account so I included it in my interest instead of hers.

Q. You have testified, and I believe there is evidence on the Government's part of your purchase of certain cashier's checks from the Bank of America in the month of May, 1945—one for \$3,000, another for \$3,500, another for \$3,500, another, I believe, for \$5,000. Where would those funds have come from for the purchase of those checks?

A. They must have come from the safety deposit box.

Mr. Hagerty: I believe we have covered, your Honor, every element that will be introduced through the accountant. I may have some further questions after further cross-examination.



(Testimony of Milton H. Olender.)

The Court: Do you wish to reserve your cross-examination?

Mr. Shelton: No, your Honor, I was going to ask if this would be a convenient time for the recess before I started, whether your Honor wanted to take a recess or not.

The Court: We resumed about 10:30. I thought we might run along until about 11:30, if agreeable to the Jury.

Mr. Shelton: All right.

#### Recross-Examination

By Mr. Shelton:

Q. Mr. Olender, you have in mind this schedule, have you not, which was identified by your [804] accountant, Mr. Hellman, which attempts to account for certain alleged cash transactions? You have that in mind, have you not, Mr. Olender?

A. I believe so.

Q. Have you examined it?

A. Yes, I have.

Q. Will you state to what extent the information contained on that sheet refers, consists of information which you furnished your counsel, which of the items on this sheet which I described were information you gave your counsel and the accountant to prepare this sheet?

Mr. Hagerty: Just a minute, I will object at this time, your Honor, on this ground: That it is improper cross-examination. The defendant has

(Testimony of Milton H. Olender.)

been examined at considerable length on this particular chart. The charts that the groundwork was laid now through his direct testimony and his direct examination, is for the purpose of the introduction of the further studies of the accountant and of additional schedules. I think that there has been ample cross-examination of this defendant on this particular schedule.

The Court: Overruled.

Q. (By Mr. Shelton): Will you answer the question, Mr. Olender?

A. I don't remember it now.

Mr. Shelton: Will you read the question?

(Question read by Reporter.) [805]

Mr. Hagerty: Just a minute. I will make a further objection, your Honor, on this ground: This chart is quite an involved and complex one. It is difficult even for an accountant to trace all things through satisfactorily to the ordinary person, and I would request that Mr. Shelton direct specific questions as to specific items on this chart rather than a generalization such as he has asked for.

The Court: Overruled.

A. Well, many of these items, Mr. Shelton, were dug up by the accountant through examination of my books. I don't know which items I gave him and which he found in the books. They are in the books, many of them, or in my personal account.

Q. (By Mr. Shelton): Would you go down the chart, Mr. Olender, and state to the best of your

(Testimony of Milton H. Olender.)

belief which of the items you gave to your accountant? A. I wouldn't know, Mr. Shelton.

Q. In the nature of things isn't there a considerable part of this that would have to be based on your testimony?

A. That is correct, but I can't tell you which specific item I gave him and which one he dug up.

Q. All right. Referring now specifically, Mr. Olender, to this \$20,550 figure which appears on the chart, will you state the source of the funds involved in that item?

A. Came from my safety deposit box.

Q. Will you state on how many occasions you went to your [806] safety deposit box to get that money? A. I believe on two.

Q. You believe on two occasions?

A. Yes, sir.

Q. Perhaps it would refresh your recollection if I could show you the cashier's checks and the applications therefor at the time of this transaction. I show you here, Mr. Olender, two photostatic copies—strike that—photostatic copies of three applications for cashier's checks and nine cashier's checks.

Mr. Hagerty: Mr. Shelton, I don't like to interrupt, but can we see those, too?

Mr. Shelton: I believe you have seen them before, counsel, but you certainly may.

Mr. Hagerty: Are they in evidence?

Mr. Shelton: They were shown to Mr. Olender by Mr. Drewes, and I thought you had seen them.

(Testimony of Milton H. Olender.)

(Thereupon the documents above referred to were handed to Mr. Hagerty.)

Q. (By Mr. Shelton): Is it your testimony then, Mr. Olender, that there were two occasions on which you went to the safe deposit box to get that money?

A. Could have been three.

Q. Was it at least two?

A. I believe so. [807]

Q. Who, if anyone, went to the safe deposit box on those two or three occasions when you went to the box to get that money?

A. I wouldn't remember now.

Q. When you got the money from your safe deposit box on those occasions where did you take it?

A. Upstairs to the counter that you buy cashier's checks at.

Mr. Hagerty: If your Honor please, I will object to this again as improper cross-examination on the grounds this was all gone into when these checks were first examined.

The Court: Overruled.

Q. (By Mr. Shelton): What did you do with the money when you got it upstairs, Mr. Olender?

A. I believe I gave it to the gentleman in that booth.

Q. Was that a gentleman in the Bank of America department which sold cashier's checks?

A. I believe so.

Q. Did anyone accompany you upstairs to purchase those cashier's checks?

(Testimony of Milton H. Olender.)

A. I don't believe so.

Q. To the best of your recollection you were by yourself?

A. I believe so, I am not sure.

Q. State whether or not you had had previous conversations with Mr. Lewis Leavy as to the form in which those cashier's [808] checks were to be made out?

A. I don't remember whether it was conversations or letters.

Q. In any event, is it correct to state that Mr. Leavy had advised you by letter or by word of mouth that those cashier's checks should be made out to Mr. Goodman?

A. I believe so.

Q. And that applies to the whole series of nine, does it?

A. I believe it does.

Q. When you got those cashier's checks—and I will ask you to look and see if some of them weren't purchased on January 10th and some on January 22nd—

A. They were, yes, sir.

Q. When you got those cashier's checks what did you do with them?

A. To the best of my knowledge—I am not sure of this—I believe that I mailed them to Mr. Leavy in New York. I am not sure.

Q. Is there anything that would refresh your recollection on that?

A. I don't know of it.

Q. Is there any doubt in your mind at all, Mr. Olender, that you bought these nine cashier's checks payable to Mr. Leavy?

A. Not Mr. Leavy. [809]

Q. I mean Mr. Goodman, at the request of Mr.



(Testimony of Milton H. Olender.)

Leavy, and that you transmitted those cashier's checks to Mr. Leavy either through the mail or directly?

A. I am not certain. I believe that is what happened.

Q. Is there anything else which could have happened?      A. I don't know.

Q. Well, this was a situation where you were handling the transactions yourself, were you not?

A. Yes, sir.

Q. And there was no one else involved in getting the money out of the box and taking the money up to the bank and getting the cashier's checks and transmitting them except you, was there?

A. Not that I know of.

Q. So that you were the sole person handling these transactions, were you not?

A. I believe I was.

Q. And I understood your testimony further to be that when the merchandise was received from Goodman which was purchased with these nine cashier's checks that it did not at that time go on your records?      A. That is correct.

Q. So that that was something out of the ordinary, was it not, which would fix the matter in your memory?      A. Not necessarily, no. [810]

Q. Well, did you customarily carry on transactions which didn't go into your records?

A. Many of them when merchandise was returned. I personally was handling earlier books, and if something came in and I knew I didn't want

(Testimony of Milton H. Olender.)

it I made no entry of the merchandise, there was no payment whatsoever made and the merchandise would be returned and I would have the invoice and the credit but not—but no entry on the books.

Q. Isn't it true, Mr. Olender, that in these short-age periods we are talking about now, 1944 and '45, you usually had to pay cash in advance?

A. Not always.

Q. Wasn't that the regular rule?

A. No, sir.

Q. Were you able to buy merchandise regularly without making any payment on it?

A. Yes, sir.

Q. In any event, this was a transaction in a very considerable amount which did not go in your books, was it not, at that time?      A. That is correct.

Q. Mr. Olender, I will call your attention to the date of July 14th, 1947, and ask you whether or not you recall an occasion when you went to the office of the Internal Revenue Bureau to make a sworn statement at which time there were [811] present yourself, then special agent Medbury Blanchard, who has testified on this stand, former agent Metlar, who is now dead, and a secretary, Miss Alice Reese. Do you recall that occasion?

A. I remember I went there on an occasion, yes.

Q. Will you state whether or not on that occasion you did make a sworn statement in question and answer form?

A. I made a statement in question and answer

(Testimony of Milton H. Olender.)

form which was returned to me and with many inaccuracies and which I did not sign.

Mr. Shelton: I ask that the statement on inaccuracies be stricken, if your Honor please. The statement, I think can be explained, but I think that is a self-serving statement.

Q. (By Mr. Shelton): You then did make that statement under oath, Mr. Olender?

A. I did.

Mr. Hagerty: We pray the indulgence of the Court to examine this. We have never seen it before.

The Court: We will take a short recess, ladies and gentlemen. Same admonition to you.

(Short recess.)

Q. (By Mr. Shelton): Mr. Olender, you had the opportunity to look at this statement during the recess, did you not? A. Yes, sir.

Q. I will ask you whether on that occasion you were not [812] asked the following questions in part—

Mr. Hagerty: If your Honor please, may I ask him a couple of questions on voir dire in reference to this statement?

The Court: Yes.

Q. (By Mr. Hagerty): Mr. Olender, at the taking of this statement were you represented by counsel? A. I was not.

Q. At the time this statement was taken did you have an opportunity before you went over to the chambers of the internal revenue to make a review

(Testimony of Milton H. Olender.)

and examination and refresh your memory from your books?       A. I did not.

Q. Subsequently were you given an opportunity to examine this statement and sign it?

A. Yes, I was.

Q. Did you sign it?       A. I did not.

Mr. Hagerty: No further questions.

Q. (By Mr. Shelton): Mr. Olender, I will ask you if, in the course of that statement you were not asked the following question and did not give the following answer, and if the Court and Jury please, this is the second question on the statement.

“Q. At this time it becomes my duty to advise you [813] that under the constitution, you are not required to incriminate yourself, and to inform you that anything you may say, and any documents you may produce at this hearing, can be used against you in any proceeding which may hereafter be undertaken by the Government. Do you understand that?       A. Yes, I do.”

Now, Mr. Olender, were you asked that question and did you give that answer?

A. I presume I did.

Q. I will ask you if you were not asked the following questions and did not also give the following answers as indicated:

“Q. Mr. Olender, in the year 1944 did you have occasion to do any business with a George Goodman?       A. Not directly.

“Q. You did not have any relationship with him?       A. Not that I remember.

(Testimony of Milton H. Olender.)

“Q. Not that you remember?”

“A. Not that I remember.

“Q. Did your store have any?”

“A. Just one invoice, whether it was with him or not, I do not remember how that deal came about.”

Were you asked those questions and did you give those answers? [814] A. I believe I did.

Q. I will ask you if you were asked the further question and gave the answer as follows:

“Q. I show you a check dated September 25, drawn on the Bank of America National Trust & Savings Association, Number 1806, and ask you whether that is the check drawn by you in payment of that invoice? A. It is.”

One further question and answer:

“Q. Is that the only money that you paid to Mr. Goodman?”

“A. The only money that I know of.”

Now, Mr. Olender, I will ask you whether or not that first question of those two was not related to the \$1,380 Goodman transaction which is on your books and which has been testified to on this trial?

A. It could be, I don't remember it.

Q. I will ask you further if you were not asked the following question after some transactions had been outlined.

“Q. But otherwise than the foregoing transaction”—and it is singular, evidently referring to the \$1,380 transaction,—



(Testimony of Milton H. Olender.)

“you never purchased any other sailor suits or merchandise from Mr. George Goodman? [815]

“A. To the best of my knowledge and belief, no.”

Were you asked that question and did you give that answer?      A. I presume I did.

Q. I will ask you if you were asked the following further questions and gave the following further answers:

“Q. Can you tell me when those transactions were had?

“A. I do not remember. They were in February of 1944, I believe.

“Q. You had no transaction of any kind?

“A. No record of any such transaction.

“Q. Your records do not disclose any such transactions?      A. No.

“Q. This was in 1944, I see. Well now, Mr. Olender, I think I would like to show you some things. Now, Mr. Olender, I show you an application dated January 10, 1944, signed with your signature, apparently 1026 Broadway, and ask you whether you purchased the cashier's check in the Bank of America National Trust Association, main branch, which I now show you photostat copies of, together with the applications.

“A. I have no record of those whatsoever.

“Q. It is your signature, isn't it? You will [816] note, Mr. Olender, that they were purchased for cash, and here I show you again this application—

(Testimony of Milton H. Olender.)

here—'cash'—Olender, 1026 Broadway. Cash—see 73,962; this is 73,962.

“Mr. Metlar: Application numbers.

“A. I have no record of them whatsoever, nor do I remember them. That 6750 is one Mr. Goodman asked me about, and I have no record of it.”

Did you give those answers to those questions?

A. I believe I did.

Q. Mr. Olender, I will ask you if you were also asked the following questions and gave the following answers:

“Q. Now, Mr. Olender, have you any explanation whatever to make?

“A. The single transaction with Mr. Goodman for \$1,380 and the single transaction with Seagoing evidenced by the invoice No. 9662 constitute the only completed transactions I have record of. If there were any other transactions, they were never complete. When I say “completed,” they were such as the check I showed you for \$27,000, check for \$50,000 which were returned to me.

“Q. The checks which I have shown you were apparently all paid into the account of Mr. Goodman, or the Seagoing Uniform Company. I'll show it to you, [817] Seagoing Uniform, Seagoing Uniform, George Goodman, Seagoing Uniform, Seagoing Uniform, Seagoing Uniform, Lafayette Bank, Seagoing Uniform. Same thing here.

“A. I have no recollection of having paid those checks, or purchased them, or of having received

(Testimony of Milton H. Olender.)

merchandise for them. If I got merchandise, I didn't keep it."

Were you asked those questions and did you give those answers?      A. I believe I was.

Q. I will ask you if you were asked the further questions and gave the further answers.

"Q. The transactions which you speak of appeared in your bank account in the Bank of America. They were withdrawals, withdrawn on that account. Did you ever draw any checks covering these sums?

"A. I have no recollection now. I would have to check my books; during the early years I had many cashier's checks drawn—many of them. They are on my records, as far as I know, because in those days I had no credit and had to send the checks in advance.

"Q. In 1944?      A. In 1944.

"Q. This is 1944 we are speaking of. [818]

"A. I sent many cashier's checks in those days."

Mr. Olender, I will further ask you if it isn't true that about a week before you gave this sworn statement from which I have read Mr. Medbury Blanchard came to your store in Oakland?

A. I wouldn't know when he came. He came there before that affidavit.

Q. He came there shortly before you gave this sworn statement, did he not?

A. I wouldn't know how much before, but he came there before.

Q. Was it rather shortly before?

(Testimony of Milton H. Olender.)

A. I wouldn't know that.

Q. I will ask you whether or not at the time that Mr. Blanchard came to your store he did not tell you that he was investigating transactions of George Goodman?

A. I believe he did.

Q. I will ask you whether or not it isn't also a fact that not very long before this sworn statement was given, Mr. George Goodman came to San Francisco?

A. I don't know when he came. He came before Mr. Blanchard came to see me.

Q. To refresh your recollection I will ask you whether or not it wasn't about two or three months before?

A. It could have been two, three or six months before. [819]

Q. And I will ask you whether or not at that time Mr. Goodman did not ask you concerning some of the same transactions which Mr. Blanchard later asked about?

A. He did not.

Q. Mr. Olender, I will recall to your recollection the testimony you gave about the money that you assert you took to Texas in the amount of \$5,000 or \$10,000 and, as I recall your testimony, you stated that you got that money out of the vault before you and Mr. Friedman counted what was left in the vault late in April?

A. That is correct.

Q. And I will ask you whether or not that money, which you state was drawn out on that occasion, was drawn out at the same time on the

(Testimony of Milton H. Olender.)

same trip as Mr. Friedman went with you or whether it was drawn out on an earlier trip?

A. Mr. Friedman did not go with me.

Q. Well, do I understand then that you had already drawn out the five to ten thousand dollars on an earlier trip before the time in April when you and Mr. Friedman inventoried the box?

A. You mean the trip to the box?

Q. The trip to the box.

A. Yes, sir, I drew that out before Mr. Friedman went in there.

Q. So that you made two separate entries to the box, [820] did you, one to draw out the five to ten thousand dollars, according to your statement, and the other with Mr. Friedman wherein the remaining cash was inventoried and the box was changed to your name and his?

A. That's correct.

Q. Now, Mr. Olender, I would like to ask you some questions about these transactions that have been testified to, the purchase of the \$20,550 from Goodman, and when that merchandise was disposed of—One further question with respect to that entry into the box, Mr. Olender. Was the entry with Mr. Friedman on the same day as the entry to draw the five or ten thousand dollars?

A. No, sir; it was not.

Q. About how long prior to the Friedman entry was the entry when you drew the five or ten thousand dollars?

A. I wouldn't know that, Mr. Shelton.

Q. To the best of your recollection?



(Testimony of Milton H. Olender.)

A. I haven't any recollection.

The Court: When you speak of the "Friedman entry," counsel, you speak of the entry when Monroe Friedman accompanied this defendant to the box, is that right?

Mr. Shelton: Yes, your Honor, concerning which the affidavit has been——

The Court: Not any independent entry on the part of Monroe Friedman? [821]

Mr. Shelton: This witness testified, as I understand it——

The Court: Is that right?

Mr. Shelton: Yes.

The Court: I just want to clarify it.

Mr. Shelton: Yes, your Honor.

Q. Mr. Olender, I believe there has been testimony at this trial, to take this figure of \$20,550, the money drawn out from the safe deposit box on those two or three entries, and on the assumption that \$25 was the price for suits paid to George Goodman, the number of suits bought has been reconstructed as 822, is that correct?

A. I believe it is.

Q. And has there also been testimony in this trial as to the defense contention as to how many of those suits remained on hand at December 31, 1945, and December 31, 1946?

A. I believe there was.

Mr. Hagerty: If your Honor please, again I repeat my objection, that this is far afield of proper

(Testimony of Milton H. Olender.)

cross-examination. None of this was gone into on the direct examination.

The Court: Overruled.

Q. (By Mr. Shelton): How many of these suits remained on hand with you or your store on December 31, 1946, Mr. Olender?

A. There were 480 sold. I don't remember the exact number [822] now. It's in the inventory.

Q. Shall I then subtract 480 suits from 822 suits?      A. I believe so.

Q. Now that leaves a figure of 342 suits, does it not?      A. 342.

Q. I will ask you whether or not it is your testimony that those 342 suits were on hand at the Army & Navy Store at December 31, 1946?

A. All except twenty of them.

Q. Shall I then subtract twenty from that?

A. Yes.

Mr. Lewis: Your Honor, I think Mr. Shelton is confusing the years. The year was '45 instead of '46, according to the testimony in the record.

Mr. Shelton: If I am wrong, the defendant can correct me, your Honor.

Q. I will ask you whether or not, Mr. Olender, that that figure of 322 suits is the number of suits on hand at December 31, 1946?      A. No, sir.

Q. When was that on hand?

A. I believe December 31, 1945.

Q. December 31, 1945, 322 suits. All right, sir. Well, I will ask you then whether it is your testimony that the 500 suits, which represent the dif-

(Testimony of Milton H. Olender.)

ference between 822 suits [823] and 322 suits, were also sold during the year 1945?

A. Your figure isn't correct, Mr. Shelton.

Q. Would you correct it, Mr. Olender?

A. It's 200, 280, and 20. That is correct, Mr. Shelton.

Q. We will run an addition on that, Mr. Olender, just to see that it does tally. By adding 280 and 200, and 20, I get a total of 500. Now I will ask you whether or not it is your testimony that those 500 suits were or were not all sold by you or the Army & Navy Store during the year 1945?

A. Well, they were sold through Mr. Leavy, the 480.

Q. Will you answer my question as to whether they were disposed of by you or the store either directly or indirectly during the calendar year, 1945?

A. I believe they were.

Q. All right. Your testimony then that these 500 suits were all disposed of during the calendar year 1945, either directly or indirectly, is that your testimony?

A. I believe so.

Q. And what does that 500 consist of, what are these respective items of 280, 200, and 20?

A. 280 are suits sold by Mr. Leavy individually, and the 200 suits are the suits sold to Mr. Lerman at one time and the 20 suits are suits sold during the process of my business at retail during 1945.

Q. So that all—it is your testimony that all those 500 [824] suits were sold during the year 1945?

A. I believe so.

(Testimony of Milton H. Olender.)

Q. To the best of your knowledge and belief?

A. Yes, sir.

Q. I will ask you whether or not in your income tax returns for the years 1944 and 1945 you reported any inventory other than the inventory of the Army & Navy Store? Did you report any individual inventory of your own, apart from such inventory as was on hand in the Army & Navy Store?

A. I don't believe I did.

Q. To the best of your recollection then, and the particular inventory I have reference to is of December 31, 1944, inventory, that inventory as shown on both the 1944 and 1945 income tax returns was the inventory of the store only?

A. That's correct.

Mr. Shelton: May I have Exhibits 1 and 2, Mr. Clerk?

Q. (By Mr. Shelton): Mr. Olender, I show you Government Exhibit No. 1, the 1945 income tax return of Milton H. Olender, and ask you if you will read from the business schedule of the Army & Navy Store the inventory as of December 31, 1944, which would be the opening inventory?

A. That would be the number 1——

Q. It would be——

A. Would you show me that, here, Mr. Shelton?

Q. It would be the opening inventory. Yes. [825]

A. \$85011.26.

Q. And I will ask you whether or not that didn't represent an inventory which you yourself took and entered on sheets?

A. Yes, it did.

(Testimony of Milton H. Olender.)

Q. Which are in evidence in this case?

A. Yes, sir.

Q. And I will ask you whether or not any of the 500 suits which have been computed here on the board appear in that inventory?

A. I don't believe they do.

Q. And do they appear any place on the return?

A. They do not, as far as I know.

Q. And I will ask you whether or not that tax return was prepared under the penalties of perjury? Does it so state on the tax form?

A. All returns are filed so.

Q. So that would include that return?

A. Yes, sir.

Q. And I will ask you whether or not during the course of this investigation you told any of the Government agents or stated to them or gave them any indication as to any error in that opening inventory figure for the year 1945, that is the figure for December 31, 1944?

A. I do not believe there is an error in that figure.

Q. Well, did you not testify, Mr. Olender, that that [826] figure did not include the 500 suits which we have here on the board?

A. It didn't include any of them.

Q. Was that number of suits reported any place else on that return? A. Not that I know of.

Q. So that inventory figure leaves out those 500 suits? A. Yes, sir.



(Testimony of Milton H. Olender.)

Q. And all of those suits were sold during the succeeding year, that is, the year 1945?

A. Yes, sir.

Q. And has it been your testimony that those suits were sold for \$25 apiece?

A. That is correct, sir.

Q. So that you have a figure there of \$12,500 which represents income received, according to your statement, in 1945, from inventory which was not reported in any place on the return for the closing 1944 inventory on that return?

A. That is correct, I believe.

Q. So that you say that goods there that sold in the succeeding year, that is the year 1945, for \$12,500 were valued at zero as of December 31, 1944?

A. They were not taken into the inventory at all.

Q. All right, sir. Mr. Olender, I will show you 1946 return—I will withdraw that, Mr. Olender, and show you the [827] 1944 income tax return, and ask you whether or not the inventory figure as of December 31, 1944, is not the same as of December 31, 1944, figure shown on the 1945 return?

A. Yes, sir.

Q. And the 1944 return then ties in with the 1945 return and shows the same figure which, as I understand it, includes none of this merchandise which is referred to on the board and never at any time did you tell the agents that there should have been a change made in that inventory?

A. I don't remember what I told the agents.

(Testimony of Milton H. Olender.)

Q. So far as you recall did you ever tell the agents that that inventory should be changed or corrected or that there was any error in it?

A. I don't remember ever telling them anything about it.

Mr. Shelton: I will ask defense counsel, through the Court, if they can produce the 1944 and 1945 California income tax returns of Milton H. Olender in connection with the inventory figures that are here testified to.

Mr. Lewis: We don't have them.

The Witness: If they haven't, I have. I will produce them, yes, sir.

Mr. Shelton: All right.

Q. (By Mr. Shelton): Now, Mr. Olender, there has been testimony in this case concerning two Goodman purchases. The first Goodman purchase, according to your testimony, in [828] the amount of \$20,550 represented by the eight cashier's checks; the other purchase, also of sailor suits, from Goodman in the amount of \$1,380. Are you familiar with that \$1,380 transaction? A. I know of it, yes.

Q. I will ask you whether or not the sailor suits involved in the two purchases, and disregarding the sizes, were the same type of sailor suits?

A. I wouldn't remember that now.

Q. You don't remember whether they were the same suits or not? A. No, I don't.

Q. Mr. Olender, I believe that you have testified in response to direct examination this morning by Mr. Hagerty that this figure from Barney trans-

(Testimony of Milton H. Olender.)

action represents money which came out of your safe deposit box, is that correct?

A. I believe it is correct.

Q. That money to purchase those two cashier checks came out of your safe deposit box?

A. I believe they did, yes, sir.

Q. I will show you the revised cash statement as produced by the Government this morning and ask you if that figure of \$2,160.03 is the cash item which it was your testimony this morning came out of your safe deposit box to buy those two cashier's checks to be sent to Barney? [829]

A. I believe they were, yes, sir.

The Court: One correction. The revised statements as produced by the defendant.

Mr. Shelton: Yes, your Honor.

The Court: You said by the Government.

Mr. Shelton: Thank you, your Honor.

The Court: We will take the noon recess, ladies and gentlemen—if this be a convenient time, counsel—and the same admonition not to discuss the case or form an opinion until the matter is submitted to you.

(Thereupon an adjournment was taken until two o'clock p.m. this date.) [830]

September 30, 1952, 2:00 P.M.

MILTON H. OLENDER

resumed the stand, and having been previously duly sworn, testified further as follows:

Recross-Examination  
(Resumed)

By Mr. Shelton:

If the Court please, the Government will at this time offer in evidence as its exhibit next in order the sworn statement of Milton Olender dated July 14, 1947, portions of which were read this morning.

Mr. Hagerty: Well, we will object to it, your Honor, on the grounds it is incompetent, irrelevant and immaterial. It has never been proved by the defendant, that is, in its entirety. There are obvious corrections in it. If that is the same copy shown to me, there were pasted transcriptions into it. It is not the best evidence, your Honor, and we object to it.

The Court: It may be marked for identification at this time.

The Clerk: U. S. Exhibit No. 48 for identification only.

(Thereupon the described statement of the defendant was marked U. S. Exhibit No. 48 for identification only.)

The Court: You already posed to the witness the several questions you desired? [831]

Mr. Shelton: Yes, your Honor.

(Testimony of Milton H. Olender.)

The Court: It may be marked for identification.

Q. (By Mr. Shelton): Mr. Olender, I believe you testified on this trial that at the end of the year 1947 revenue agent Root who is sitting here at the Government counsel table, came to see you with respect to an investigation of your returns and that you asked him to come back in the first part of 1948?

A. I am not sure. I believe that is correct.

Q. All right, sir. Now directing your attention to the date January 13, 1948, I ask you whether or not it isn't true that on or about that date revenue agent Root held a conference with you in your office at the Army & Navy Store?

A. I believe he did.

Q. I will ask you whether or not on that occasion internal revenue agent Root didn't tell you that there were Express Company records which revealed that at least part of this \$20,550 of Goodman purchases that have been previously referred by you were shipped to you at your place of business?

A. I have no recollection of that.

Q. I will ask you whether or not it is also a fact that on that occasion in your office you told revenue agent Root you were unable to recall the circumstances of the transactions with Mr. Goodman?

A. I don't remember that, sir. [832]

Q. Now, Mr. Olender, just before the recess we were discussing the matter of the item of the two Barney cashier's checks. You recall that, that the two cashier checks that you purchased and were



(Testimony of Milton H. Olender.)

sent to Los Angeles, I believe, to pay for some merchandise?

A. Either sent or delivered in person to his brother. I don't remember which.

Q. In any event, they were—— A. Yes.

Q. ——transmitted down there in one way or another? A. That's right.

Q. Is it your testimony that the cash to purchase those cashier's checks did or did not come out of your safe deposit box?

A. To the best of my knowledge they came out of the safe deposit box.

Q. Now, Mr. Olender, I will invite your attention to pages 619 and 620 of the transcript to the following testimony when you were on the stand:

“Q. (By Mr. Drewes): With respect to these two checks which are defendant's Exhibit Z, one of them marked \$2,484.26, dated December, 1944, and one in the amount of \$1,911.77, dated November the 9th, 1944, Mr. Olender, is it your testimony that you purchased these at the Bank of [833] America? A. Yes, sir.

“Q. And how did you pay for them?

“A. With cash.

“Q. And from what sources did the cash come?

“A. I don't remember now, Mr. Drewes.

“Q. Do you have any record which would indicate the source? A. No.

“Q. The source of cash? A. I haven't.

“Q. It was stated by your counsel in response to a question asked of him by the Court that this

(Testimony of Milton H. Olender.)

particular transaction was discovered by your accountants after the stipulation was entered into, is that correct?

“A. I believe so. I didn’t work with the accountants. They did all of the work.

“Q. You recall when?

“A. Oh, this last week—probably Sunday or Monday. Just the last few days.

“Q. Did your accountant ask from what source this cash came?           A. I don’t remember.”

Did you give those answers to those questions, Mr. Olender?           A. I must have. [834]

Mr. Hagerty: We will stipulate that he did. That’s the record, your Honor.

But again I wish to raise an objection to this whole line of cross-examination as being improper. It is not within the scope of the examination that we put the defendant on the stand for this morning and this is simply an attempt to rehash cross-examination that has already been gone into.

The Court: Overruled. All these matters, as I view it, bear upon the cash transactions.

Mr. Hagerty: On the cash position of the defendant.

The Court: And the source thereof.

Q. (By Mr. Shelton): Mr. Olender, I will ask you if this morning there were not identified by you and introduced into evidence three deposit slips of the Olender-Elkus bank account?

A. Yes, sir.

Q. And that is defense Exhibit AF, is it not?

(Testimony of Milton H. Olender.)

A. Yes, sir.

Q. Mr. Olender, I have here what purports to be a transcript, a full transcript of the Olender-Elkus bank account. It is a photostatic copy which the Government obtained from working papers then in the possession of Mr. Ringo, at one time your accountant, and I would like to ask you about one particular entry in here.

Mr. Hagerty: For the purposes of the record, if your Honor [835] please, and so we don't lose any of our position, we again object to any information or any cross-examination or any introduction into the record of any communication from the defendant to Mr. Ringo and vice versa that the Government is now asking.

The Court: And your objection is overruled.

Q. (By Mr. Shelton): Mr. Olender, I will call your attention there to a deposit in the amount of \$1,000 under date of May the 12th, 1945, the name besides that looks to me like Fred *DeLew*, and I will ask you what that transaction was?

A. Yes, sir. Mr. Fred DeLew, who I will produce in this Court—

Mr. Hagerty: Just a moment. I will object to this. We haven't seen these records. I would like to see these.

Mr. Shelton: You have the originals, have you not, counsel?

Mr. Hagerty: If you question the integrity of the originals, I would like to see what you are offering as a substitute.

(Testimony of Milton H. Olender.)

Mr. Shelton: We don't question the integrity. They are not in our possession.

If the Court please, Mr. Hagerty seems to question the source of this material, and I wonder if it would be appropriate for me to state the source for the record and his information. [836]

The copies were—the originals of this material were obtained from Mr. Ringo and photostated and those originals were returned to Mr. Ringo. We of the Government were advised that they constituted a part of his working papers in the case. This is a transcript of a bank account, if the Court please.

Mr. Hagerty: Well, they are complex records, your Honor, and I don't seem to recognize them nor does my fellow counsel.

The Court: Maybe the defendant will.

Mr. Hagerty: We have had no chance to examine them, really.

Mr. Shelton: Mr. Hagerty, these records would be available from the bank, would they not, that is a ledger record which would be available from the bank?

The Court: Based upon the representation of the Government counsel I will allow them to be exhibited, to the Court, subject to foundation, of course.

Q. (By Mr. Shelton): Mr. Olender, I will ask you whether or not after looking at this photostat—

A. Might I look at it a little closer? I just glanced. I don't know what's on it.

(Testimony of Milton H. Olender.)

(Document handed to witness.)

Mr. Hagerty: Might I ask the defendant something in reference to those? [837]

The Court: Yes.

Q. (By Mr. Hagerty): Mr. Olender, are those documents in your handwriting?

A. They are not.

Q. Do you recognize them?

A. There is one here that is in my handwriting. I see this top one is——

Q. In reference to the question being asked you as to certain transactions, is that in your handwriting? A. No, sir; no, sir.

Q. Do you recognize the handwriting?

A. I don't know whose it is, no, sir.

Q. (By Mr. Shelton): Mr. Olender, after looking at that photostat of the \$1,000 item in the form of a deposit with the name Fred DeLew, is your recollection refreshed as to the nature of that transaction?

A. I am quite sure that this is what happened, as you will notice on the next entry, Mr. Fred DeLew is a very close personal friend of mine. He wished to buy an automobile. He did not wish to pay cash for the automobile. So he gave me \$1,000 in cash and I wrote out a check to the Canal Motors, which is the next item on the list, and gave him, I believe, a \$100 change. I am not sure. And he purchased a check with that nine hundred—the car



(Testimony of Milton H. Olender.)

with that nine hundred dollars and we have that check. I believe it's in [838] the file here.

Q. I will ask you whether there was any particular purpose for running that transaction through the Olender-Elkus bank account rather than through your personal bank account?

A. No particular reason. It was a personal account also.

Q. But this personal account was jointly with Mr. Elkus?

A. Mr. Elkus had nothing to do with that account.

Q. Mr. Olender, I hand you a copy of what I think can properly be referred to as defense schedule No. 4. That is a schedule or is one of the schedules which was handed this morning to Government counsel just at the opening of the Court.

I will ask you to look at that schedule No. 4 and ask you what differences there are in it from the schedule which was produced here the other day, I think while Mr. Hellman was on the stand, and was distributed to the jury at that time.

A. Well, I don't know what is on either of these schedules actually. But I do know that there have been some additions made. For instance, those Olender-Elkus deposits of cash; I believe that there is some loans and some gifts that are included in this one that were not—I have not seen either one of them up to this minute.

Q. I will ask you whether or not it isn't a fact that [839] this particular schedule No. 4 deals with

(Testimony of Milton H. Olender.)

amounts of money which are stated to have gone in and come out of your safe deposit box?

A. That is correct.

Q. I will ask you whether or not a record was made at the time you put that money in the box and at the time you took that money out of the box, as to amounts going in or coming out?

A. No, sir, there was not.

Q. No record was made?

A. No record whatsoever.

Q. And is it not a fact then that this reconstruction which I show you here, which I understand was done by your accountant, must have been based on information which you gave to your accountant?

A. It was based on the information that was brought out here this morning, that there was only one possible source of funds and that this was the only possible source, if it was not from my business, not from my personal account, it would have had to come from the box, no other place.

Mr. Shelton: Your Honor, I move that answer be stricken that the witness be asked to answer the question.

Mr. Hagerty: I will join in the motion to strike, your Honor. It is also not responsive, but I will enter an objection to the question on the ground that it calls for [840] the opinion and conclusion of this defendant.

The Court: Overruled.

Mr. Hagerty: He doesn't know what was in the mind of the accountant in preparing his schedule.

(Testimony of Milton H. Olender.)

The Court: Overruled. Motion to strike granted.

Mr. Shelton: Will the Reporter read the last question, please?

(The record was read.)

A. Yes, I believe.

Mr. Hagerty: Also speculation, your Honor. It assumes facts not in evidence. It assumes he knows.

The Court: Well, if he knows he may answer.

Q. (By Mr. Shelton): Will you state, Mr. Olender, at what time Mr. Hellman was first engaged to perform work in this case?

A. I don't know exactly. Mr. Lewis brought him into me some time after he entered the case. I don't remember when.

Q. About how many weeks or months has it been since Mr. Hellman started to work on the case? A. I don't know.

Q. To the best of your knowledge?

Mr. Hagerty: Objected to as already asked and answered, your Honor.

The Court: He has answered. You don't know, is that the answer? [841]

A. That's correct, sir.

Mr. Shelton: I don't want to impinge upon the Court's ruling but I would like to ask this question to see whether it is proper.

Q. Can you tell me whether or not it was more or less than a year ago that Mr. Hellman started work on this case, Mr. Olender?

(Testimony of Milton H. Olender.)

A. It would definitely be after September of last year when I first hired Mr. Lewis.

Q. All right. Can you come any closer than that as to when Mr. Hellman started work?

A. No, I can't.

Q. I will ask you whether or not Mr. Hellman had any first hand information of the facts in this case? A. I don't know what he had.

Q. At the end of the year 1946, had Mr. Hellman any connection with your business or affairs at all? A. No, sir.

Q. So that all the information that he has acquired is subsequent to the time that the transactions occurred? A. I believe so.

Q. Now, Mr. Olender, I want to direct your attention to the five particular items which I believe represent changes from the original schedule, that is, there are five items, I believe, on Schedule 4 as revised which were not on the [842] original schedule 4.

Now the first of these, to which I wish to call your attention, is under the date of July 17, 1944. The caption or description is: "Transfer to Olender-Elkus bank account," in the amount of \$1,500.

State if you know why your accountant included that item under revised schedule and not on the original schedule?

A. I went to the bank on Saturday when I was free—the first time since I have been free in this trial—and dug up as many of the deposits as I could possibly find and I discovered many which he

(Testimony of Milton H. Olender.)

had not taken into account. This was one of them.

Q. State whether or not you advised your accountant as to the source of this \$1,500?

A. I did.

Q. What did you advise him?

A. I told him that it came out of my safe deposit box, as far as I knew.

Q. And that was the first time in this trial that you had so advised your accountant?

A. I believe so.

Q. I will direct your attention next, Mr. Olender, to the item under January of 1945, "Cash received from Fresno partnership," in the amount of \$1,807.46, and to the similar item on January of 1946 in the amount of \$1,725.11. [843]

I will ask you for what reason those two items were included in the revised schedule and not in the original schedule?

A. My accountant had not taken those into consideration. I had received that money and put it in the box and there was nothing in the record that showed that I had it.

Q. When did you first advise your accountant of the receipt of that money?

A. This last week.

Q. How was that money transmitted to you from the partnership?

A. In cash or cashier's check, I am not sure, by my mother.

Q. Where did you get it?

A. Either in Fresno or in Oakland.



(Testimony of Milton H. Olender.)

Q. Do you recall which? A. No, I don't.

Q. Will you state whether or not in the two months of January, 1945, and January of '46, each of the other partners in that business received a similar cash contribution? A. They did not.

Q. Why was your case considered special and why did you get special treatment?

Mr. Hagerty: I will object to this, your Honor, as [844] being outside the scope of the direct examination.

The Court: Overruled.

Mr. Hagerty: It is incompetent, irrelevant and immaterial what the others got.

The Court: Overruled.

A. The answer to that, Mr. Shelton, is that the tenants in the Olender building made separate checks to my two cousins, who are owners in that building, and up to the time of the death of my mother mailed one check to her, which included her share and my share. The other partners received their money every month, as we do now, check by check from each of our four tenants.

Q. (By Mr. Shelton): Now the distribution which you have stated with respect to January, 1945, was the distribution relating to the year 1944, was it not? A. I believe it was, yes.

Q. Will you state whether or not the distribution you have referred to for 1946 was the distribution for the year 1945? A. Yes, it was.

Q. Now would you state whether or not that distribution was on a basis of gross income?

(Testimony of Milton H. Olender.)

A. No, that was the final figure plus depreciation, which of course you have as income but is not included in your income as a total. I had a certain amount of money coming [845] to me which I got and then my income figure would be that figure less depreciation, but naturally this is how much I got.

Q. I will ask you, Mr. Olender, whether someone made a calculation of profit to the partnership in January, 1945, and January, 1946?

A. There was no profits. It was just a question of income and expenses, and the figure was—the final figure you got was the difference.

Q. Didn't I understand that these two figures were stated by you to have been net income figures?

A. Well, you understand, Mr. Shelton, I made out two returns. The partnership return was different from my individual return.

Mr. Shelton: Just a moment. If your Honor please, I ask that it be stricken and the defendant be instructed to answer the question.

The Court: All right, that may go out.

Mr. Shelton: Mr. Reporter, would you read the question back, please?

(The record was read.)

A. That's correct.

Q. (By Mr. Shelton): All right. If they were net income figures, isn't it a fact, Mr. Olender, that someone had to compute the net income? [846]

A. The accountant did that.

Q. Who was the accountant?

(Testimony of Milton H. Olender.)

A. This accountant, here.

Q. Those figures were computed, were they not, back about January of the years involved?

A. That's right.

Q. Who computed the net incomes of those two years at that time, Mr. Olender?

A. I did.

Q. You did?           A. Yes, sir.

Q. Where did you do that?

A. Either in Oakland or Fresno.

Q. Do you remember which?

A. No, I don't. It could have been either place.

Q. Well now, what happened to the remainder, what happened to the gross income of those two—of the partnership in the two years which did not represent net income?

A. I don't understand your question.

Q. Well, in these two years this partnership had net income and gross income, did it not?

A. That's right.

Q. What happened to the funds which went to pay expenses?           A. They were just paid.

Q. Was there a partnership bank account in those years? [847]

A. No, sir. Each partner paid their own taxes, their own share of expenses individually. The other two did. My mother paid all, mine and hers.

Q. And do I understand, for example, in the case of expenses, such as utilities, that the different partners would make direct checks payable to the Pacific Gas & Electric?

(Testimony of Milton H. Olender.)

A. There were no such checks. There were only two or three items per year and they were large items—insurance, some repair, and that's all. I think if you will check the partnership return you will never find over three or four items of expense the entire year, and those expenses were paid by each of the two partners in San Francisco individually and by my mother for me and her.

Q. And to whom were the checks drawn?

A. Which checks?

Q. The checks in payment of the expenses?

A. To the people that they were owed to.

Q. So that a man who had an obligation, had a debt coming from that partnership, would get some four checks separately?      A. Three checks.

Q. Three checks?      A. Yes, sir.

Q. Separately?      A. Yes, sir, and still does.

Q. How many tenants were there on that partnership property, [848] Mr. Olender?

A. In which year, Mr. Shelton?

Q. First, the year 1944?

A. I believe—this is a rather difficult question to answer, because we had it subleased to a man who had two tenants. We received one check from him, while he received two checks from his tenants. But he mailed us his rent separately. So we actually had three tenants on the ground floor but received only two checks, one from Mr. Spurling, who was the man who rented out the other two stores.

Q. Do I understand that each of the years 1944,

(Testimony of Milton H. Olender.)

1945, Mr. Spurling drew one check to you and your mother for your share of the income and another check to the other two or three partners?

A. That is correct.

Q. Mr. Olender, are those checks available for those years? A. I believe they are, yes, sir.

Q. Could you produce them here in Court?

A. I can, if I can find them—I believe I can. I wouldn't have Mr. Spurling's check. He would have it back. I won't have it, but I will have our checks that we paid the bills separately for. [849]

Q. You will have your checks for expense?

A. We will have our checks which we paid, but I can't have the tenant's check. He will have his own check back.

Q. All right, sir. Now, Mr. Olender, I would like to direct your attention to the two additional changes from the original Schedule 4 to the revised Schedule 4. Each of them represents transfer to Olender-Elkus bank account. One is dated May 2, 1946, and the other is dated September 18th, 1946. I will ask you why those two items are on the revised schedule?

A. Because I just found them yesterday or the day before yesterday and gave them to my accountant.

Q. Did you advise your accountant that the two amounts involved, that is, \$1,700 and \$1,500, had come from your safe deposit box?

A. I believe I did.

Q. Are you sure about that?



(Testimony of Milton H. Olender.)

A. They couldn't have come from anywhere else.

Q. Will you answer the question, please?

A. I am fairly sure I told him that. You didn't state the correct figures there, Mr. Shelton, I don't think.

Q. Would you read them then, Mr. Olender, from the schedule?

A. I don't know which ones. There are three there and you read me two of the last ones. I think you read one [850] wrong.

Q. The two figures I am referring to are one, transfer to Olender-Elkus bank account \$1,700, May 2, 1946. Do you find that? A. Yes, sir.

Q. The other one was transfer to Olender-Elkus bank account in the amount of \$2,500 on September 18th? A. That is correct, yes, sir.

Q. Those are the two figures I just gave.

A. I didn't know that they were.

Q. So that your answer to the question would be the same? A. Yes, just the same.

Q. Mr. Olender, when you were on examination this morning by Mr. Hagerty I believe you testified as to your sources of income in the years 1944 through 1946, is that correct? A. Yes, sir.

Q. I will ask you whether or not you wish to include in that testimony as to sources the fact that during the year 1945 you received cash from sales of merchandise which you received from George Goodman?

(Testimony of Milton H. Olender.)

A. I believe so. Those, of course, went into my store account, I believe.

Q. Didn't you testify—

A. That was not income, Mr. Shelton.

Mr. Shelton: I ask to have the statement stricken, "it [851] was not income," if your Honor please.

The Court: Well, he may explain it.

The Witness: Your question asked me about income.

The Court: It may remain in the record. You may explain it as to what you meant by it.

The Witness: Well, Mr. Shelton asked me if that was the only source of my income, I believe, and that was not income.

Q. (By Mr. Shelton): I will ask you whether or not, Mr. Olender, this morning in listing sources of income you did not list gifts?

A. Yes, I listed gifts.

Q. Well, then in your classification, if you classified gifts as income and you were the one that was doing the testifying, do you not also classify as income money received from sales by Lewis Leavy of sailor suits sold to Mr. Lerman?

A. My understanding of income is something that you are ahead on, something that is profit. This is not profit. These were sold at cost. There was no income.

Mr. Shelton: Your Honor, may that go out as unresponsive?

The Court: Motion denied.

(Testimony of Milton H. Olender.)

Mr. Hagerty: At this time, if your Honor please, I offer to Mr. Shelton the state income tax return that he requested. We found the 1946 in the office, and we have the partnership state return for 1946 in evidence which is defendant's No. Q in evidence. We don't have the 1944 and [852] '45 in the office, but we will make a search for them tonight if you want them.

Q. (By Mr. Shelton): Mr. Olender, do you recall what happened to your State of California 19——

A. I don't, but I have copies. If they haven't them, I have them. I will get them for you, be very happy to.

Q. And you believe you can produce those in the morning?           A. Yes, sir.

Q. Mr. Olender, this morning on voir dire you were asked about whether the 1944 and 1945 personal checks that you produced constituted all your personal checks for those years. Have you had an opportunity to refresh your recollection since that time as to whether you did include in the checks produced all that you wrote in those years?

A. I believe I did. May I ask you a question? I don't know what voir dire means. I have heard it thrown around here a lot, but I don't know what it means at all.

Q. That was when I was asking you questions before the admission of those checks into evidence. You remember Mr. Hagerty——

(Testimony of Milton H. Olender.)

A. I remember that, I just don't know the meaning of the word *voir dire*.

Q. It was the time I was questioning you about those checks, you recall it?

A. Yes, I recall it. [853]

Q. Since that time have you had the opportunity to refresh your recollection as to whether you produced all the 1944 and all the 1945 checks on your personal bank account?

A. I haven't had any opportunity, but I am sure that is all that there are. I don't know where any others are.

Q. Mr. Olender, the Government accountants tell me that for the year 1944 there were 14 checks that were not produced, and for the year 1945 there were three personal checks which were not produced. Do you know where those checks are?

A. If I knew they would be here, sir.

Q. Do you know where they are?

A. No, sir, I do not.

Q. Mr. Olender, I believe you will recall that this morning on direct examination you testified with respect to your 1947 income tax return that you included therein an item of interest on \$20,000 of bonds.

A. Yes, sir.

Q. Now, those bonds have been referred to considerably in this trial. I will ask you in what year those bonds were purchased?

A. I believe 1945. I am not sure.

Q. All right, sir. Was there income in the year 1945 on those bonds?

A. No, sir.

(Testimony of Milton H. Olender.)

Q. Now, in the years 1946 to 1948, I will ask you whether [854] you prepared your own individual income tax returns?

A. I don't think I did in '48.

Q. All right, sir, I will ask you whether in the year 1946 you did not prepare your own income tax return? A. Yes, I did.

Q. I will ask you whether in the year 1947 you did not give information to Mr. Ringo to be used in preparing your individual return?

A. I did.

Q. I will ask you whether in the year 1948 you gave information to Mr. Ringo for use in preparing your 1948 individual return? A. I did.

Q. I will ask you for the years 1946 to 1948 who prepared the income tax returns of your mother, Mrs. Mollie Olender? A. I did.

Q. For the year 1946 who reported the income on the \$20,000 of bonds I have referred to?

A. My mother did.

Q. And the year 1947 who reported the income on those \$20,000 of bonds? A. I did.

Q. And did you do that pursuant to work papers given to Mr. Ringo? Did you make for him a work paper showing your income in that year from which he prepared your return? [855]

A. I probably did.

Q. That is in evidence in this case, isn't it, Mr. Olender? It was identified here?

A. I don't know. I guess it is.



(Testimony of Milton H. Olender.)

Mr. Shelton: May I have plaintiff's Exhibit No. 27 in evidence?

Q. (By Mr. Shelton): I show you, Mr. Olender, Government's Exhibit 27 in evidence and ask you what it is?

A. It is an itemized statement of my income and expenses for 194—something, I don't know.

Q. Well, to shorten it, did you give that to Mr. Ringo to prepare your 1947 return?

A. I believe I did.

Q. I show you Government's Exhibit 28 in evidence and ask you if you gave that to Mr. Ringo for the purpose of preparing your 1948 return?

Mr. Hagerty: If your Honor please, for the purpose of the record may I have that running objection to all documents that came from the witness Ringo?

The Court: Yes. The objection is overruled.

A. Yes, I did.

Q. (By Mr. Shelton): Then, Mr. Olender, who reported the 1947 income on those bonds?

A. My mother, I believe.

Q. Wasn't it your testimony this morning that you reported [856] that income in 1947?

A. No, sir.

Q. It was not your testimony?

Mr. Hagerty: If your Honor please, as far as—I am going to make an objection here. The defendant is being cross-examined upon complicated reports, reports which speak for themselves and are the best evidence of what they state. I think

(Testimony of Milton H. Olender.)

this is a tricky method of trying to confuse the witness. I am not sure that it is 1947 or '46——

The Witness: My last statement was wrong.

Mr. Hagerty: One year his mother reported, the next year he did.

The Court: You may resort to the documents.

The Witness: I was wrong, I was thinking he meant 1948. I did report it in 1947, not '48.

Mr. Hagerty: At this time, when the question originally arose, the Government agreed to produce the mother's income tax returns showing that for 1946 and at this time I would ask for this return.

Mr. Shelton: My recollection is that the clerk's records will show that they were lodged with him on that day. I would like to ask him. The record will show, Mr. Hagerty, that we produced that return that same day.

Mr. Hagerty: Yes, I overlooked putting it in evidence, but may I at this time offer it as defendant's—— [857]

The Court: After counsel finishes.

Q. (By Mr. Shelton): Mr. Olender, did you then testify this morning on direct examination by Mr. Hagerty that that 1947 income was reported on your own return?

A. That is correct, Mr. Shelton, yes.

Q. And for the calendar year 1948 who reported the income on those \$20,000 bonds?

A. My mother.

Mr. Shelton: If your Honor please, the Government will at this time offer in evidence Exhibits 11

(Testimony of Milton H. Olender.)

and 12 for identification which are respectively the 1947 and 1948 returns of Milton Olender as an individual.

The Court: They may be marked in evidence.

Mr. Hagerty: We have no objection, your Honor. It is outside the scope of the indictment.

The Clerk: United States Exhibits 11 and 12 heretofore for identification, now in evidence.

(Thereupon U. S. Exhibits Nos. 11 and 12 for identification were received in evidence.)

Mr. Shelton: It is offered on the basis of wilfulness, if the Court please.

Q. (By Mr. Shelton): Mr. Olender, I show you defendant's Exhibit AB and I want you to look particularly at the very top sheet there which appears to represent a deposit. Will you state to the Court the circumstances of that deposit [858] including whether or not you yourself made it?

A. Yes, sir, I made the deposit myself.

Q. Will you state to the Court and Jury where the \$5,000 involved in that deposit originated?

A. It came from my safe deposit box as far as I remember.

Q. Do you recall whether anyone went with you to the safe deposit box?

A. No one ever went with me to the safe deposit box except Mr. Friedman.

Q. Mr. Olender, would you mind letting me finish my question before you answer?

A. I am sorry, sir.

(Testimony of Milton H. Olender.)

Q. Will you state who, if anyone, went with you to your safe deposit box at the time you drew out the \$5,000?      A. No one, to my knowledge.

Q. If you recall, will you state who, if anyone, went with you to the bank at the time that you deposited the \$5,000?

A. No one that I remember.

Q. Will you describe what happened when you got to the bank, as well as you remember it?

A. Yes, sir. When you open a new account in the bank you have to go up to the new accounts window and they usually have a rather inexperienced person there. So I went to Mr. Seale, whose name you will find on the bottom there, who is one of the oldest and most able tellers in the bank and I [859] handed him the \$5,000. He then made out what is known as a T-X, a teller's exchange. That meant that the teller at the new accounts window would not have to count that money. They usually take about 15 minutes to count that and Mr. Seale can count it in three minutes. And then he took it up to the new account window, they made the entry and put it in my bank book.

Q. What denominations were the money——

A. I don't remember.

Q. Would you again let me finish my questions before you interrupt, Mr. Olender?

A. I am sorry, I thought you were finished.

Mr. Shelton: If your Honor please, would this be an appropriate time for the afternoon recess?

The Court: All right, we will take the afternoon recess, ladies and gentlemen. The same admonition to you.

(Short recess.)

Mr. Hagerty: If your Honor please, with your consent we would withdraw the defendant at this time and put on two short witnesses.

The Court: All right.

VERA MANGER

called as a witness on behalf of the defendant, sworn.

The Clerk: Please state your name, your address and [860] your occupation, if any, to the Court and Jury.

The Witness: Vera Manger, 526 Cornell Street, San Lorenzo.

The Clerk: And your occupation?

The Witness: I am a housewife; mother.

Direct Examination

By Mr. Hagerty:

Q. Mrs. Manger, are you acquainted with the defendant in this case, Mr. Olender? A. Yes.

Q. And how long have you known him?

A. Oh, about ten years.

Q. Directing your attention to the year 1943, approximately, were you employed at that time?

A. Yes, I was employed by Dorfman Hat Company in Oakland.

Q. What was your occupation?



(Testimony of Vera Manger.)

A. Bookkeeper.

Q. At that time did you enter into the employ of the defendant, Mr. Olender?      A. Yes.

Q. Was that on a full-time or part-time basis?

A. He was a very good customer of the Dorfman Hat Company and they allowed me to set up his books and go there for a couple of hours a week.

Q. So you went over there and set up a set of books for him; is that true? [861]

A. I did.

Q. Did he have a set of books when you went there?

A. Well, it was very vague and I had to set them up myself.

Q. I see, the books were inadequate that you found there, is that true?      A. Yes.

Q. Now I call your attention to defendant's Exhibits K, J, I and H, in evidence, and ask you if you recognize them?

A. Yes, those are the books I set up.

Q. And before today how long has it been since you have seen these exhibits?      A. Six years.

Q. Examining these records, are the entries in your handwriting?      A. Yes.

Q. When you were employed by Mr. Olender did he ever make any entries in those books?

A. No, sir.

Q. You made all the entries, is that right?

A. That is right, I did it all myself.

Q. Will you explain to His Honor, the Judge, and the ladies and gentlemen of the jury your

(Testimony of Vera Manger.)

routine each week, how would you handle your duties there?

A. Well, when I came in he would give me all the invoices and I would enter all the bills and all the papers were waiting [862] for me. I took care of everything.

Q. Did he ever at any time try to tell you where to put things in the books?

A. No, sir, I don't think he would know how.

Q. I will direct your attention now to a transaction or an entry in Exhibit K at page 51. On page 51 under the date June, 1945, there is an entry, June 19th, 1945. Is that in your handwriting?      A. Yes.

Q. Would you please read the entry to the ladies and gentlemen of the Jury?

A. That is on the 19th of June. It was a check made out to Seagoing Uniform Corporation for \$27,000.

Q. Then drawing your attention to page 52 in the same exhibit under date of July 14th, 1945, is there an entry in your handwriting?

A. Yes, Joseph Svabo—I can't quite pronounce it, but I guess that is what it is, for \$50,000.

Q. Do both those entries indicate checks drawn by the defendant payable to those named firms?

A. Those are checks I probably made out.

Q. Those entries are in your handwriting, is that true?      A. That is right.

Q. Now directing your attention to Exhibit J, defendant's Exhibit J in evidence which was in-

(Testimony of Vera Manger.)

licated as being the [863] general journal of the Army & Navy Store at page 19 there is an entry under the date of July 25, and also one under the same date on the same page, both entries under July 25. Are they in your handwriting?

A. Yes, sir.

Q. Would you please read those entries to the ladies and gentlemen of the Jury and tell us what they represent?

A. Well, this was on July 25th and I debited cash for \$27,000 and accounts payable I credited for \$27,000 because the check was returned, and there is also—which other date was that?

Q. The same date, July 25th, but it is down several lines.

A. Oh, yes, and there is another one for \$50,000, check No. 2482. That was \$50,000 accounts payable that the check was returned.

Q. In other words, it is your testimony that these two checks, one for \$27,000 drawn in favor of the Seagoing Uniform Company and the second for \$50,000 in favor of Joseph Svabo were both returned?

A. Yes.

Q. Do you know why they were returned?

A. Well, at that time it was war time. I recall that merchandise was very hard to get and I know that we sent out the checks before the merchandise, and then they couldn't fill it, they would send the checks back. [864]

Q. I will direct your attention again to defendant's Exhibit J which is the general journal at

(Testimony of Vera Manger.)

page 17. There is an entry under date of February 28th, 1945, reading, "Accounts payable, M. Olender." There is a debit to accounts payable and a credit to M. Olender investment account with an explanation to record cash payments covering purchases from Money Back Smith and Barney's Clothes Shop in the amount of \$6,932. Is that entry in your handwriting? A. That is right.

Q. Can you explain that to the ladies and gentlemen of the Jury?

A. Well, that is probably an entry that when I went to pay the check, that we found that he had paid that out of his personal account so then I debited the accounts payable and then credited his investment account. He paid that out of his personal account.

Mr. Shelton: Objected to, if your Honor please, on the basis she said that was probably the entry. It doesn't seem very definite.

The Witness: That was the entry. It is a figure of speech.

Q. (By Mr. Hagerty): While you were keeping the books for the defendant on a part-time basis you were still employed full time by Dorfman Hat Company, is that true?

A. Yes, sir. [865]

Q. Are you presently employed, Mrs. Manger?

A. No, I am a mother of two children and I have a sitter home and——

Q. I think that is a full-time job in itself?

A. You can say that again.

(Testimony of Vera Manger.)

Q. In all the time that you were employed by the defendant is it your testimony that he did not attempt to dictate the bookkeeping policy to you?

A. No, sir, that was entirely my job.

Mr. Hagerty: You may cross-examine.

### Cross-Examination

By Mr. Drewes:

Q. Mrs. Manger, for how long were you employed by Mr. Olender on a part-time basis?

A. Around three years. I think it was three years.

Q. Beginning in 1943? A. Yes.

Q. From what information did you make your entries in the book, Mrs. Manger?

A. From all the papers, all the invoices and the checks and the papers.

Q. Where did you find those?

A. Those were waiting on a desk when I came in.

Q. On the desk that you use?

A. That is right.

Q. And from what source did you get information as to sales, [866] if you recall?

A. Well, he had to give those to me from his deposit book.

Q. Who put the invoices, checks, and other materials to which you referred on the desk for you?

A. Well, sometimes they were there unopened from the mail. They were just waiting there and I would check them.



(Testimony of Vera Manger.)

Q. And at other times——

A. Other times they were opened. I guess when they wanted to check merchandise as it came in.

Q. Were the entries which you made in the book made solely from information furnished you by Mr. Olender?

A. They were made from the invoices and the transactions that I took care of.

Q. Did Mr. Olender give you those invoices and furnish the information to you?

A. Well, he just left the information—I mean the invoice there, and I just handled it in my own way.

Q. If any question arose as to how a transaction was going to be reflected in the books, Mrs. Manger, whom did you consult?

A. Well, there wasn't any question except when I went to make a payment on something like that one in question and he told me it was already paid. He had forgotten to tell me, and that is why I made that entry. [867]

Q. Did you find it necessary to consult Mr. Olender from time to time in order to determine more properly how to account for entries?

A. No, I just took care of the books and just gave him the balance at the end of the year.

Q. I am going to give you again, Mrs. Manger, defendant's Exhibits H, I, J, and K, and ask you to turn to the capital account?

A. You mean his personal account?

Q. I believe you will find in the investment account in 1945 a credit in the amount of \$5,000 is

(Testimony of Vera Manger.)

reflected. Will you see if you can find that for me? It should be June of 1945, if I am correct.

A. In what?

Q. June of 1945.           A. Yes.

Q. Is there reflected there an entry crediting the investment account in the amount of \$5,000?

A. On June? No.

Q. I beg your pardon. Do you find a credit in the amount of \$23,000 to the investment account?

A. In June of 1945?

Q. Yes.           A. No.

Q. Do you find a credit in the amount of \$13,000? [868]           A. No.

Q. Will you turn to the general journal then, Mrs. Manger?           A. Yes.

Q. Do you find there under date of June 19th, 1945, a debit to cash in the amount of \$23,000?

A. In June of 1945? What is the amount?

Q. Debit to cash in the amount of \$23,000?

A. Yes, I do.

Q. And what are the offsetting credits?

A. Loans payable to J. Blankstein and to the capital account a reinvestment.

Q. Did you make that entry?           A. Yes.

Q. Upon what information was that entry based?

A. Well, it has been so long I can't recall.

Q. Well, let me ask you this—

A. It is my handwriting, though.

Q. Would you make an entry of that kind credit-

(Testimony of Vera Manger.)

ing the capital account of Mr. Olender without consulting him?           A. I don't think so.

Q. As a part-time bookkeeper you would not know of an additional investment of capital in the business unless your employer so advised you, would you?           A. Yes.

Q. That is correct, is it not? [869]

A. Yes.

Q. Mrs. Manger, for the purposes of refreshing your recollection I am going to show you photostatic copies of nine cashier's checks in varying amounts, each payable to George Goodman and all dated early in 1944, and three applications for cashier's checks concerning which there has been considerable testimony in this trial. I am going to ask you if, in the course of your employment for Mr. Olender, you recall any conversation with him or recall any other information coming to your attention from any source with respect to those checks or those applications?

A. No, I don't.

Q. I believe you testified on direct examination, Mrs. Manger, concerning certain journal entries made for the purpose of adjusting the accounts payable account with particular respect to transactions had with Barney's and with Money Back Smith. Can you find that? Do you have the journal in front of you?

A. Yes. When was that now?

Q. I believe that was in February of 1945.

Mr. Hagerty: It is page 17.

(Testimony of Vera Manger.)

A. Yes, I have it.

Q. (By Mr. Drewes): Do you have that?

A. Yes, I have.

Q. In front of you? [870] A. Yes.

Q. And do you have also the purchase account? Can you tell me when that entry was made with respect—strike that. When was the adjusting entry made in connection with those two matters?

A. Well, the date of this is February 28th.

Q. And will you read the entry again?

A. Well, I have debited accounts payable for \$6,903.02, and credited the investment account to record the cash payments covering purchases for Money Back Smith and Barney's Clothes Shop.

Q. Do you recall the circumstances under which that entry was made?

A. Well, I can see it is self-explanatory.

Q. Never mind. Beyond that, do you recall any conversation with Mr. Olender concerning that entry?

A. Well, just by looking at it I know I must have started to make out checks and he told me he had forgot to tell me he had paid cash. That is why I would make this type of entry.

Q. That is why I am asking you the question, do you have any recollection here and today and as you now testify concerning that issue?

Mr. Hagerty: I will object to that, your Honor. It is already asked and answered. He says it is automatic from [871] the entry itself.

The Court: Objection overruled.

Q. (By Mr. Drewes): Do you have any inde-

(Testimony of Vera Manger.)

pendent recollection now as to the circumstances leading up to that particular entry in the journal?

A. Well, I can't recall any conversation, not after six years, but just from looking at it I know just——

Q. Well, the record speaks for itself, Mrs. Manger. I wondered whether you had any additional recollection of any of the circumstances under which that was made?

Mr. Hagerty: If your Honor please, I think she should be permitted to explain her answer. She has been cut off several times.

The Court: The witness may explain.

The Witness: It was my procedure, I would make out the checks and then he would look them over before I would send them out, and apparently from this entry he told me that he forgot to tell me that he made cash payments for these particular bills out of his personal account. Therefore, I made this entry.

Q. (By Mr. Drewes): Is it your recollection that he told you that he had made cash payments out of his personal account?

A. Well, that is why this entry was made. I was only there a few hours a week. Sometimes he made payments without [872] me.

Q. It is your best recollection that Mr. Olender stated to you that those particular accounts payable had already been paid?      A. Yes, sir.

Q. And that they had been paid out of his—— paid by him out of his personal account?



(Testimony of Vera Manger.)

A. Yes.

Q. Did you enter into the books, Mrs. Manger, all of the purchases and sales that Mr. Olender called to your attention? A. Yes.

Q. State, if you know, who opened the mail at Mr. Olender's place of business?

A. Well, I wouldn't know.

Q. Did you open any of the mail?

A. Well, sometimes there were some unopened ones that were obviously invoices.

Q. You say sometimes. I take it, then, that most of the time the mail was opened by someone else? A. Well, yes.

Q. And you don't know who that person is or was? A. No.

Q. In connection, Mrs. Manger, with the journal entry in the amount of \$23,000, debit cash \$23,000, credit loans payable \$10,000 and capital investment \$13,000, which we have— [873] to which we have already alluded, had you known that of the \$13,000 credited to the capital account, \$5,000 represented the proceeds of sale, would you have made the entry as it is reflected in the journal?

A. I don't quite understand that question. Would you repeat it?

Q. I will rephrase it, Mrs. Manger. You have the entry in mind, the June 19th entry, showing a debit to cash and a corresponding credit to capital account and loans payable. Do you have that in mind? A. Yes.

Q. Now, with respect particularly to the credit

(Testimony of Vera Manger.)

of \$13,000 to the capital investment account, had you known that \$5,000 of that \$13,000 represented proceeds from the sales of goods, would you have made the credit to the capital account as it is shown in the journal?

Mr. Hagerty: Just a minute, if your Honor please. That is a hypothetical question. It is based upon facts not in evidence.

Mr. Drewes: She is a bookkeeper, your Honor.

The Court: Overruled.

Mr. Drewes: You may answer the question.

A. Well, the sales were handled right from the tapes and they were deposited, and that is where I got my sales figures. This had nothing to do with the sales. [874]

Q. That wasn't my question, Mrs. Manger. I posed a question to you which, as counsel has stated, is a hypothetical question. As a bookkeeper, had you known that the \$13,000 which is shown as a credit to the capital account, of that sum, \$5,000 was a receipt from the sale of goods——

A. How would I know that?

Q. Did you ask anyone about that particular item?

A. Well, I can't recall now, but all the sales were entered in the sales book with the cash and this is a journal entry. If it was a sale it would have been entered as a sale.

Q. Then your answer, I take it, is that if \$5,000 of that sum of \$13,000 shown as a credit to the investment account had been received from sales

(Testimony of Vera Manger.)

you would not have made the entry as shown in the book?

A. I don't know anything about that entry being sales. As far as I know that is just what it is, a reinvestment.

Q. Mrs. Manger, I am simply trying to elicit a reply to a hypothetical question I have posed to you three times now. Now, just forget about the entry as it purports to be and answer my question. If, assuming that the \$13,000 included \$5,000 which had been received by the store from the sale of goods would you have made that entry as it appears in the books?

A. Well, as a bookkeeper, if you assume a part of it had been sales, well then I will assume that it was and that it [875] would have been entered a different way; but assuming that it wasn't sales—I mean saying that it wasn't sales, I entered it the way it was supposed to be entered.

Q. Will you turn again to the entries in the purchase book, Mrs. Manger, and find particularly the original credits to the Barney and Money Back Smith accounts?

A. Do you have the dates for that so I will know the page number?

Mr. Hagerty: I think that was page 17.

Q. (By Mr. Drewes): The end of 1944.

A. Oh, it was a general journal entry?

Q. Will you turn to the ledger please, where the original entries are reflected, original charges

(Testimony of Vera Manger.)

to purchase. You have the purchase register, wouldn't it be shown in there?

A. What page is it? It was during 1945?

Mr. Drewes: 1944, I believe. The end of 1944.

A. I see here several invoices. This must be it. From here down to here (indicating) inclusive that is.

Q. (By Mr. Drewes): Do the Barney transactions, the Barney purchases appear there?

A. Yes.

Q. And also a number of purchases from Money Back Smith? A. Yes, sir.

Q. And are the respective dates of those purchases shown? A. Yes. [876]

Q. Would you read the dates of the respective purchases?

A. Money Back Smith, February 8—do you want the amounts?

Q. No, just the dates, please.

A. February 8, February 3, February 2, the 24th, the 24th, March 15th, March 8th, March 2nd. And then for Barneys there is on October 30th and November 30th.

Q. Now the entries to which you have just referred appear in the register at the end thereof. In other words, they appear after the entries for the final months of the year 1944, do they not?

A. No, they appear in the last month.

Q. They appear in the last month?

A. Yes, sir.

Q. Although, as you have just indicated the

(Testimony of Vera Manger.)

purchases were made much earlier in the year, were they not?      A. Yes.

Q. Can you explain why the entries that were made in the purchase register in the last month of the year—can you explain why the entries were made in the purchase register in the last month of the year although the purchases were actually made very much earlier?

A. Well, I can't quite recall, but it might have been because he wanted to return the merchandise which sometimes happened. Or maybe he decided to keep it. [877]

Q. Do you recall any of the circumstances which led up to the making of those entries in the books as you have just read them?      A. No, I don't.

Q. So when you say that Mr. Olender might have wished to return those goods you are guessing or surmising, are you not?

A. Well, it happened with other stuff, with other merchandise, that sometimes they wouldn't enter a bill because they were going to send the merchandise back.

Q. Did Mr. Olender ever tell you that he intended to send that merchandise back?

A. Well, I can't recall now.

Q. You have stated, Mrs. Manger, that you understood that Mr. Olender had paid for those purchases out of his personal account. What do you mean by "his personal account"?

A. Well, he had his own personal account outside of the business account.



(Testimony of Vera Manger.)

Q. Do you know where he kept that account?

A. I don't know anything about it.

Q. Do you know what kind of an account it was?

A. No, I just know it was his personal account.

Q. You think it was a bank account, commercial account in a bank? [878]

A. Yes, bank account, I imagine.

Q. Mr. Olender told you that he had paid for those purchases out of his personal account?

A. That is right.

Q. Do you recall, Mrs. Manger, when the defendant told you that he had paid for that merchandise out of his personal account?

A. Well, whatever the date of the—I don't know—the entry, I guess or when I entered it, or when I went to pay for it. That is probably when it happened. I mean that is when it happened.

Q. Do you have any recollection of his telling you when he paid for it?

A. Well, I can't quite recall, but I used to make out the payments and he probably caught it then and told me he had already paid for it out of his personal account.

Q. Those entries are not made until December of 1944, the original charges to the purchase account are made in the last month of 1944?

A. Uh-huh.

Q. The purchases themselves were made much earlier in the year, were they not?      A. Yes.

(Testimony of Vera Manger.)

Q. Now, do you recall any conversation with Mr. Olender concerning the posting of those entries? [879]

A. No, he never told me how to post.

Mr. Hagerty: Objected to, your Honor—well, the answer is in already.

The Witness: I don't think he even knew how I kept the books.

Mr. Drewes: May that be stricken, your Honor?

Mr. Hagerty: I think it is part of the answer.

Mr. Drewes: It is not responsive, and an opinion and conclusion of the witness. I asked her no question at all.

The Court: It may go out.

Mr. Drewes: That is all.

### Redirect Examination

By Mr. Hagerty:

Q. Mrs. Manger, the defendant—let me withdraw that. Do you have any exact idea that the defendant told you he paid for these things out of a personal account or out of personal funds or out of his personal cash?

A. Well, I can't recall that.

Q. You don't know, do you?                      A. No.

Mr. Hagerty: No further questions. You may step down.

The Court: All right, the witness is excused.

(Witness excused.)

The Court: Is the next witness a lengthy witness?

Mr. Hagerty: No, this will be a very short witness. This concludes the two bookkeepers that had to do with the books. [880]

The Court: It is about time for the adjournment. I am not going to keep the jury late.

Mr. Hagerty: No, these two ladies came from across the Bay. This witness will be very short. At this time, if your Honor please, I would like to offer in evidence as the Defendant's next Exhibit in order the return of Mrs. Mollie Olender for the year 1946.

The Court: It may be marked in evidence.

Mr. Drewes: No objection.

The Clerk: Defendant's Exhibit AH in evidence.

(Thereupon the document above referred to was received in evidence and marked Defendant's Exhibit AH.)

### VIRGINIA BUSBY

called for the defendant, sworn.

The Clerk: Will you state your name, your address and your occupation if any, to the court and to the jury?

The Witness: Virginia Busby, 1430 Alma Avenue, Walnut Creek, and I am a bookkeeper at West Coast Printing Company.

(Testimony of Virginia Busby.)

Direct Examination

By Mr. Hagerty:

Q. Mrs. Busby, you are employed as a full-time bookkeeper at the West Coast Printing Company in Oakland, is that true? A. Yes, sir.

Q. And what system of bookkeeping is in effect there? [881]

A. Gee, just a regular system of bookkeeping—accounts receivable, accounts payable, check register and cash.

Q. Is it sometimes termed a Hadley system?

A. No, we don't use the Hadley sheets. The Hadley system is really a—it is, I believe a printing company that just puts out regular sheets and regular ledgers.

Q. Are you also employed by the defendant, Milton Olender, as a part-time bookkeeper?

A. Yes, sir.

Q. And have you been so employed since 1946?

A. Yes, sir.

Q. You have before you various Exhibits of the defendant which constitute books of account from his firm, Exhibits, I,J,H,K. Do you recognize them? A. Yes, sir.

Mr. Drewes: If your Honor please, may I interrupt just a moment. The witness testified that she had been employed by the defendant since 1946. I would like to have the date established with more particularity.

Mr. Hagerty: Yes.

(Testimony of Virginia Busby.)

Q. (By Mr. Hagerty): I will bring to your attention, Mrs. Busby, Defendant's Exhibit L in evidence which purports to be a check record. Do you recognize this Exhibit?      A. Yes, sir.

Q. Opening to page 1 of the Exhibit there are several entries [882] beginning with June 1, 1946. Are they in your handwriting?      A. Yes, sir.

Q. Is that approximately the time you started to keep the defendant's books?

A. Well, I believe it was the early part of May.

Q. The early part of May, 1946?

A. Yes, sir.

Q. Are you acquainted with Mrs. Vera Manger?

A. Yes, sir.

Q. And did you know that she had been so employed prior to your employment?

A. Yes, sir, because when I went up there, why, she showed me how they worked their books so I could follow right on in the same system.

Q. Now, in reference to your duties while employed by Mr. Olender, did he make any entries in the books?      A. No, sir.

Q. Did he tell you how to make entries in the books?      A. No, sir.

Q. Will you describe to his Honor and the ladies and gentlemen of the jury your routine duties at Mr. Olender's?

A. I take all the invoices and I enter them into the purchase ledger. I take all the sales receipts and enter them into the cash received, and I take the check register and enter it into the cash dis-



(Testimony of Virginia Busby.)

bursed. Then I extend it out [883] to the various——

Q. Have any agents for the Bureau of Internal Revenue ever questioned you in connection with the affairs of Mr. Olender?

Mr. Drewes: Object to that your Honor, as irrelevant and immaterial.

The Court: Overruled.

Mr. Hagerty: You may answer.

A. Yes, down at West Coast Printing Company two gentlemen came in, told me they were from the Government, and they wanted to look up a check, and I don't remember whether they had the check number or the amount, but they had the day and the month and the year.

Q. What was the check?

A. It was a pay check issued to me.

Q. Paycheck issued to you?

A. By West Coast Printing Company.

Q. How had you cashed that check?

Mr. Drewes: Your Honor, what does that have to do with any of the issues that are before this jury?

Mr. Hagerty: It is preliminary, your Honor. In other words, I wish to show the extent and detail which the Government went in this investigation which will be material later on.

Mr. Drewes: It is irrelevant. [884]

The Court: Unless you connect it up in some fashion I will strike it.

(Testimony of Virginia Busby.)

Q. (By Mr. Hagerty): What was the amount of the check?

A. I believe it was around \$56, \$57, it was my pay check.

Q. Did it have an endorsement on it of Mr. Olander's?      A. Yes, sir.

Q. Why?

A. Because he cashed my pay check for me up to his house.

Q. Was that the only inquiry made of you by the men from the Bureau of Internal Revenue?

A. Yes, sir.

The Court: I think the last may be stricken. I can't see any relevancy.

Mr. Hagerty: Well, if your Honor please—all right, we withdraw it.

The Court: This witness has been excused and Court will adjourn this case until tomorrow morning at 10 o'clock with the same admonition not to discuss the case or form an opinion until the matter is submitted to you.

(Thereupon Court was recessed until Wednesday, October 1, 1952, at 10 o'clock a.m.) [885]

October 1st, 1952, 10:00 A.M.

MILTON H. OLENDER

resumed the stand, and having been previously duly sworn, testified further as follows:

The Clerk: Mr. Olender, will you please restate your name for the record?

A. Milton Howard Olender.

Recross-Examination  
(Resumed)

By Mr. Shelton:

Q. Just prior to the beginning of Court one of your attorneys handed me your 1944 and 1945 California State income tax returns. I show you here your 1944 California return and ask you what the inventory figure is for December 31st, 1944, as shown on that return?

A. Would that be the end inventory or the beginning inventory, Mr. Shelton?

Q. For the year 1944 it would be the end.

A. \$85,011.26.

Q. I will also show you your 1945 California income tax return and ask you what the opening inventory on that is as of January 1st, 1945?

A. The exact same figure.

Q. And there is no other place on those two returns, is there, where any inventory appears?

A. Just the ending inventories of each [886] year.

Q. Any other inventory as of December 31, 1944?

A. No, sir.

(Testimony of Milton H. Olender.)

Q. I will ask you whether or not these inventory figures of \$85,000 plus includes any of that George Goodman merchandise that you testified about earlier on this stand? A. They do not.

Q. I will ask you whether or not these two returns were not also prepared under the penalties of perjury? A. They were.

Mr. Shelton: The Government will offer these two returns, if your Honor please, the 1944 as the Government's next in order, and the 1945 following that.

The Court: They may be marked.

The Clerk: U. S. Exhibits No. 49 and 50 in evidence.

(Thereupon the California State income tax returns of the defendant for the years 1944 and 1945 were marked U. S. Exhibits Nos. 49 and 50 respectively in evidence.)

Q. (By Mr. Shelton): Mr. Olender, I will show you defendant's Exhibit T in evidence, which is a bank book in the name of Betty Olender.

She is your wife, is she not?

A. Yes, sir.

Q. I will invite your attention to an entry in that book indicating a \$5,000 deposit, I believe as of December 12, 19—— [887]

A. December 20th.

Q. December 20th—I beg your pardon—1945.

Have you examined that entry?

A. You mean here or——

(Testimony of Milton H. Olender.)

Q. In this pass book? A. Yes.

Q. And that was a deposit made in your wife's bank account, was it not? A. Yes, sir.

Q. And who made that deposit?

A. I don't remember.

Q. What was the source of the \$5,000 covered by that deposit, Mr. Olender?

A. \$3,000 of that was Mrs. Foote's and \$2,000 of it was from me, to the best of my recollection.

Q. \$2,000 then of that was yours?

A. It came from some source outside of my business. But it was mine. It wasn't Mrs. Foote's.

Q. It was money which originated with you?

A. Yes, sir.

Q. And from where did you get that \$2,000 to deposit in this account?

A. I believe I drew a check on the Army & Navy Store. I am not sure.

Q. Will you state whether or not that \$2,000 came from your [888] safe deposit box?

A. It could have. I don't remember.

Q. Well, is it your testimony that you do or do not know where it came from?

A. I do not know at this time where it came from.

Q. Mr. Olender, I show you a ledger account showing deposits and withdrawals from the Bank of America in the account of Milton H. Olender, and I will invite your attention to a sheet here as of December, 1945. There are some five items here, all but one having a red check mark.



(Testimony of Milton H. Olender.)

A. Yes, sir.

Q. Who placed those red check marks on that sheet, if you know?

A. I don't know. I know I didn't.

Q. I invite your attention to the one item there that does not have a red check mark beside it and ask you what that is?

A. I don't know. I presume that is the check I issued to my wife at that time. I don't know.

I believe Mr. Lewis' accountant has that check.

Mr. Shelton: May I ask defense counsel through the Court if they have that check?

Mr. Lewis: What is the date of the check?

Mr. Shelton: December 20, 1945, is the date of the indicated withdrawal, Mr. Lewis—Milton H. Olender's [889] personal account in the Bank of America.

Mr. Hellman: Is there such a check indicated on the bank statement, indicated as going through that account?

Mr. Shelton: I will let you look at the bank statement, Mr. Hellman (showing).

Q. (By Mr. Shelton): Mr. Olender, have you seen this \$5,000 check represented by this item?

A. I have seen it at some time. I don't remember when. But I believe recently.

Q. Do you believe that you can locate that check?      A. I will try.

Q. I will ask you whether or not there is any tie-in between that \$5,000 entry here in this ledger

(Testimony of Milton H. Olender.)

account, Mr. Olender, and in the \$5,000 deposit on the same day in your wife's bank account?

A. No, there isn't.

Q. It is purely coincidental then that the \$5,000 item in your wife's bank account and the \$5,000 withdrawal from your own bank account is in the same amount?

A. No, it is not coincidental. I am sure that \$5,000 out of my personal account went into my wife's bank account. I am sure of that.

Mr. Shelton: Mr. Reporter, would you read that next to the last question and answer, please?

(The record was read.) [890]

Q. (By Mr. Shelton): Do I then understand that your testimony is that there is no relationship between the \$5,000 deposit in the wife's bank account and the \$5,000 withdrawal from your personal account?

A. I said just exactly the opposite.

Q. The record will show what you said, Mr. Olender. What do you now say?

A. Read the record.

Q. I ask you again, Mr. Olender, whether there is any tie-in between these two items?

A. I said I believe there was.

Q. What is the tie-in?

A. I believe that I drew a check on my personal account, that is to the best of my knowledge, and deposited it in my wife's bank account. I am not sure, but that is what I believe.

(Testimony of Milton H. Olender.)

Q. Is it now your testimony that \$3,000 of that money was or was not money of your mother-in-law's, Mrs. Foote?      A. It was.

Q. It was money of your mother-in-law's, Mrs. Foote?      A. That's right.

Q. And under what circumstances did your mother-in-law give you that \$3,000?

A. Part of it came from Mrs. Widrin, as she testified, and I had the balance and I had the money in my safe deposit box. [891]

Q. Mr. Olender, I will ask you whether it is not true that you had a conversation with Mr. Ringo concerning this \$3,000 item which you say you received from your mother-in-law, Mrs. Foote?

A. I don't remember.

Q. I will ask you whether or not you didn't have a conversation with Mr. Ringo, the substance of which was as follows:

“Mr. Olender stated that his wife had secured some money from her mother, who is now deceased. I (that is Mr. Ringo) told him that that could be proved as he could then show the probate of the mother-in-law's estate.”

Mr. Hagerty: If your Honor please, I am going to object to this type of cross-examination. This is an attempt to put before the jury an unsigned statement.

I think the proper way would be to ask the witness the question. If he can't reproduce the witness and have the witness Ringo testify from the stand——

(Testimony of Milton H. Olender.)

The Court: This is Mr. Ringo's statement, apparently.

Mr. Shelton: It is, your Honor, and we are laying a foundation to call Mr. Ringo if Mr. Olender denies the conversation.

The Court: All right.

Mr. Hagerty: Then I object to it as being an improper method of impeachment. I ask that he show the statement to [892] the witness on the stand.

Mr. Shelton: (Handing document to Mr. Hagerty.) Go over to the next page, Mr. Hagerty.

The Court: Preliminarily will you indicate the time, place.

Mr. Shelton: Your Honor, the time and place are not precisely indicated. It was evidently some time toward the end of the time Mr. Ringo was working on his audit of Mr. Olender's tax affairs.

The Court: And the conversation refers to a conversation between this defendant and Mr. Ringo?

Mr. Shelton: Yes, your Honor.

The Court: Who was present at that time?

Mr. Shelton: So far as the Government knows, only Mr. Ringo and Mr. Olender. We can ask Mr. Olender——

Mr. Hagerty: I would object to this type of examination, too, your Honor, on the grounds it is hearsay and in no way binding upon this defendant. This is a statement made by the witness Ringo out of the presence of the defendant to the revenue agents.

(Testimony of Milton H. Olender.)

The Court: Relating, however, to a conversation purportedly had by Ringo with the defendant.

Mr. Hagerty: Yes, and I think the proper way to produce it would be to put the witness Ringo on the stand to testify, so we have the opportunity to cross-examine him. [893]

The Court: The examiner may so direct his questions to the witness as to refer to the time and the colloquy, the conversation that occurred between Mr. Ringo and this witness.

You can do that by couching the questions.

Mr. Shelton: All right.

The Court: Asking whether or not he had a conversation with Mr. Ringo of the following nature, to wit—

Mr. Shelton: All right.

Q. Mr. Olender, I will ask you whether or not you had a conversation with Mr. Ringo, the substance of which was as follows:

That you stated that your wife had secured some money from her mother, who at that time was deceased; that you told Mr. Ringo—that Mr. Ringo told you that that would be easy to be proved from the probate of the mother-in-law's estate. That you said that there wasn't any estate but that your mother-in-law wanted to secure a pension from the State of California and she could not secure such a pension if she had any money; she therefore withdrew the money—this is what you told Ringo—from her bank account and gave you the cash and you put it into your safe deposit box. And after your



(Testimony of Milton H. Olender.)

mother-in-law died you opened a bank account with the personal funds in the wife's name.

Did you or did you not have such a conversation with [894] Mr. Ringo?

A. I may have. I have no recollection of it.

Q. Mr. Olender, I will ask you whether you recall an occasion in the year 1945 or 1946 when you purchased some shoes from the Los Angeles office of the Boston Shoe Company and re-sold those same shoes to Montgomery, Ward & Company?

A. No, sir, I have no recollection of ever having sold anything to Montgomery, Ward & Company.

Q. You have no recollection that during the years 1945 or 1946—

A. If I did, I have not the slightest recollection of Montgomery, Ward ever buying anything from me.

Q. Mr. Olender, there has been very considerable testimony in this record concerning your use of cash, has there not?      A. Yes, sir.

Q. There has also been very considerable testimony in this record concerning your use of cashier's checks for various purposes, has there not?

A. Yes, sir.

Q. Is it not a fact that you were, during the years 1944, 1945, 1946, a man of rather substantial means?

Mr. Hagerty: Objected to as calling for the conclusion and opinion of the witness, your Honor.

(Testimony of Milton H. Olender.)

The Court: Overruled.

A. Yes, sir. [895]

Q. (By Mr. Shelton): Is it not also a fact, Mr. Olender—showing you here the ledger of your personal bank account, defendant's Exhibit AC—that that personal bank account of yours was relatively inactive, there were not very many transactions in it?

Mr. Hagerty: I will object to that, your Honor. The bank account speaks for itself. It is an exhibit that explains itself completely.

The Court: Overruled.

A. I don't find over seven entries a month at any time.

Mr. Shelton: If the Court please, I will ask that this be passed among the jury.

The Court: Yes.

(Defense Exhibit AC passed to the jury.)

Q. (By Mr. Shelton): Mr. Olender, why was it that a man of your means would do business so largely in cash and cashier's checks when he had bank accounts?

A. A man of my means at the present moment is issuing nothing but cashier's checks.

Q. What is the purpose of that, Mr. Olender?

A. Because the Government has a lien on all my bank accounts and I can't do anything but cashier's checks.

Q. But during the period we were talking about here the same thing obtained, did it not, that you

(Testimony of Milton H. Olender.)

were doing relatively small business with your personal account and a relatively [896] large business in cash, in cashier's checks as shown by the evidence in this case?

A. I don't know. Some people ask for cashier's checks as Barney's letter shows. They wanted them.

Mr. Shelton: I move that be stricken, your Honor.

The Court: That may go out.

Q. (By Mr. Shelton): Will you answer the question?

A. Will you repeat the question, please?

Mr. Shelton: Mr. Reporter, will you read the question back, please?

(The record was read.)

Mr. Hagerty: If your Honor please, I think that answer was proper. It was on cross-examination that he asked for it. He said that some of the people demanded cashier's checks and that was evidenced in the letter in one of the exhibits.

The Court: I suppose that is an answer, some of the people demanded them.

Mr. Shelton: All right, your Honor.

Mr. Hagerty: May that answer be reinstated in the record, your Honor?

The Court: Yes.

Q. (By Mr. Shelton): Mr. Olender, I will ask you whether or not you were an honor graduate of the University of California when you attended that institution? [897]

A. Yes, sir, I was.

(Testimony of Milton H. Olender.)

Q. Can you tell the ladies and gentlemen of the Jury what those honors consisted of?

A. You just took an honor course in your senior year in your major subject. My major subject was economics. I wrote a treatise on the Refunding of Bond Issues of the United Railroads in 1905. It was my thesis, and as a result of that thesis being satisfactory, I was given honors in economics.

Q. Mr. Olender, I would like to ask you about the payments of your personal expenses during the years 1945 and '46, which are the two years in this case.

How did you pay your grocery bills in those years?

A. I don't remember.

Q. Did you pay them by cash or by check?

A. I had no charge accounts.

Q. You had no charge accounts? A. No.

Q. What about the accounts that you had with these various department stores; first, Magnin's; did you usually pay your Magnin's bill?

A. I never paid the bills.

Q. Who paid them, Mr. Olender?

A. I presume my wife or daughter did. I don't know.

Q. Do you know whether they were paid by cash or check? [898]

A. I don't know how they were paid.

Q. Did you pay any of the W. & J. Sloane's obligations in 1945 or '46?

A. I believe I made a deposit in 1945, a cash

(Testimony of Milton H. Olender.)

deposit. They asked for it when I first went there and I gave it to them.

Q. Of how much?

A. I believe a thousand dollars. I didn't have my check book with me and they wanted a deposit and I gave them that money.

Q. I will ask you whether or not you customarily carried as much as a thousand dollars in your pocket at that time?           A. I did.

Q. How much did you usually carry in your pocket?

A. I don't remember, but I never had less than a thousand dollars.

Q. How did you pay the Gray Shop during the years 1945 and 1946?

A. I did not pay any of my wife's charge accounts personally.

Q. Who paid your automobile charges in those years, expenses such as gasoline, automobile repairs and similar expenses?

A. Those were all paid by check from the store.

Q. Those were paid by check on the store account?           A. Yes. [899]

Q. And were they then charged to your personal account?           A. No, sir, they were not.

Q. In other words, was it treated as an operating expense of the store?

A. Part of it. Mr. Ringo handled that and took a certain part for—I don't know—I believe a half or something like that, and then took depreciation,



(Testimony of Milton H. Olender.)

and figured out just how much was business and how much wasn't.

Q. What about the part of the gasoline expense that represented personal travel as contrasted with business travel, how was that paid?

A. Well, there was practically no personal travel. It was all business, except going to and from my home.

Q. Mr. Olender, when did you first start doing business with Money Back Smith?

A. Oh, perhaps as far back as 1928.

Q. 1928. Will you state whether or not you did business with Money Back Smith substantially continuously over the period 1928 to 1944?

A. Not very much until the war started. Very little between 1928 and '44. '41 and '42—about 1941 I started.

Q. Then I will ask you whether beginning about 1941 you started to do business rather frequently with Money Back Smith?

A. I believe I did.

Q. To the best of your recollection about how much would you [900] have bought from that concern in 1942?

A. I wouldn't have any idea.

Q. Well, you had established, had you not, a rather clear-cut business relationship with Money Back Smith; they knew you and you knew them?

A. That's correct.

Q. And in the year 1944, specifically, I will ask you how you paid Money Back Smith for merchandise, in cash or in check?

A. Both.

Q. Which represented most of the transactions?

(Testimony of Milton H. Olender.)

A. I don't know.

Q. What was the reason for paying partly cash and partly in check?

A. Something that they wanted, for some reason—I don't remember. I knew that all cash transactions were shown on my books.

Mr. Shelton: That's not responsive. Your Honor, may that go out?

The Court: It may go out.

Q. (By Mr. Shelton): What was the reason for making some cash payments?

A. You are asking me a question eight years old. I don't remember, Mr. Shelton.

Mr. Hagerty: I will object to the question, too, your [901] Honor, as being asked and answered. He said he didn't remember, that they requested it.

The Court: Well, that is the answer.

Q. (By Mr. Shelton): During the year 1944, Mr. Olender, is it your testimony that such cash payments as were made on the Money Back Smith account were made by you personally?

A. Yes.

Q. To whom in that concern did you make those payments?

A. They would be made to the cashier, the girl at the window who had charge of receiving the payments.

Q. When you would make a payment to that girl, would you get a written receipt?

A. I did.

Q. Do you have those receipts at present?

(Testimony of Milton H. Olender.)

A. I can't find them, Mr. Shelton. I looked very diligently, because it is to my advantage. I have the Smith card, all of the invoices, together, and I tried to bring them here, and I would be very happy if I could find them, and I am going to look again tonight, if it takes me all night to find them.

Q. You were in Court yesterday, were you not, when your former bookkeeper, Mrs. Manger, testified? A. Yes.

Q. I will ask you whether or not your bookkeeper, Mrs. Manger, did not indicate that her belief was that some of these transactions between you and Smith were personal transactions? [902]

A. Oh, no.

Q. There is no such indication in her testimony?

A. No, no, sir.

Q. Mr. Olender, I believe the testimony yesterday was that many, if not all, of those purchases from Money Back Smith in the year 1944 were made about February and March, is that correct?

A. I believe so.

Q. And I believe the testimony also was that the entries, to put that on the records of your store, were made at the end of the year 1944?

A. That is correct.

Q. What was the reason for that nine or ten month delay in entering those purchases on your record?

A. I couldn't tell you that now. I don't remember. I only know they were entered.

(Testimony of Milton H. Olender.)

Q. Were they entered on the records at the end of the year because you only then gave the information to Mrs. Manger?

A. That could be true. Manger is her name.

Q. Manger. Pardon me. You say that could be true.

A. That could be. I don't remember.

Q. Is that your best recollection?

A. It is, yes.

Mr. Shelton: No further questions. [903]

#### Further Redirect Examination

By Mr. Hagerty:

Q. Mr. Olender, I will show you the Government's Exhibit No. 29 in evidence, which purports to be a ledger card from I. Magnin & Company in the name of Olender, Mr. M. H., and Betty, 121 Alpine Terrace, Oakland, with typewriting in red lettering, "Okay daughter Sue to charge," or something like that (handing to witness).

A. Yes, sir.

Q. At the time of the existence of that account was your daughter living at your home?

A. Yes, she was.

Q. How old was she?

A. She is twenty-five now. So this was 1946, that would be seven years ago, she would have been eighteen years of age.

Q. Was she regularly employed on the outside?

A. Yes, she was.

(Testimony of Milton H. Olender.)

Q. Was she self-supporting?

A. No, she lived at my home.

Q. Did she turn her earnings over to you?

A. No, she did not.

Q. What did she use her earnings for, to your knowledge?

A. I don't know. She just did whatever she wished with her money.

Q. Well, did she make any of the purchases that are represented on that account that you know? [904]

A. I don't know, but I believe she must have.

Q. At any rate, did you pay for anything that she was charged with?

A. I didn't even know these charge accounts existed.

Q. Now the Government has in evidence Exhibits 30 through 34, I believe, or 33—yes, Exhibits 30 through 33, which are forms of the Treasury Department which are to be reported in by banks when transactions occur involving greater sums than a thousand dollars in cash.

Now, could you take these exhibits—take Exhibit 30, read what the transaction is to the jury and explain to the jury where you got the money for the transaction.

A. Well, there is one cashier's check for \$10,000, and one cashier's check for \$15,000.

It says, "Issue"—or no,—"Currency involved," I should say, "\$10,000" and "\$15,000," and it says,



(Testimony of Milton H. Olender.)

“Issued cashier’s checks for amounts paid with entire cash. Purpose to buy bonds.”

Then on November, 1945, there is \$25,000 “Issued cashier’s check. Paid cash. For purchase of bonds.”

Q. Now where did you get the funds to start that transaction?

A. Well, the December 5 money came from my safe deposit box, and, I believe—I am not sure—I believe that is the date that I purchased my mother’s bonds.

The November, 1945, \$25,000, came from an Army & Navy [905] Store check which I had cashed that day and gotten 250 \$100 bills, as shown by another one.

Q. Yes. You are now—you are not referring to Exhibit 30 now, are you?

A. No, but it has that date on here.

Q. Well, restrict your descriptions now to Exhibit 30, and I will give you the other exhibits in due course.

A. All right.

Q. You——

A. They are both on this one.

Q. Well, I will show you Exhibit 31 in evidence, which involves the sum of \$25,000 (handing to witness).

A. Yes, that’s the same one. Yes.

Q. Well, the same transaction or separate transaction?

A. They must be the same transactions.

(Testimony of Milton H. Olender.)

Q. Those two forms represent the same transaction?

A. There are two on that first one and evidently one of them is a repetition of the other one.

Q. There are different dates on them, aren't there?

A. No. One has November, and the other has November 20. I believe it's a duplicate report of the same transaction.

Mr. Shelton: Your Honor, we would ask what he believes go out. That's a conclusion of the witness.

The Court: That may go out.

Q. (By Mr. Hagerty): Well, I will ask you this, Mr. Olender, [906] do you recall making two transactions involving \$25,000 for the purchase of bonds—

A. Yes.

Q. —in the month of November?

A. No, just one.

Q. Just one transaction in that month?

A. Yes.

Q. And then there was a subsequent transaction in—

A. December.

Q. —December? A. Yes.

Q. I will show you U. S. Exhibits 32 and 33 and ask you to examine them and if you can now tell us where the funds came in those transactions?

A. I don't remember this particular one. It's for a thousand dollars and \$1,500. It doesn't come to my mind what it was for.

(Testimony of Milton H. Olender.)

Q. You say there is a transaction here for \$1,500?

A. \$1,000 and fifteen hundred. I don't remember those. I can check on those. But I just haven't seen these except in evidence, and I don't know what they are. I know what the next one is.

Q. That's the item of \$3,000 on May 29, 1946?

A. That is correct.

Q. Government Exhibit No. 33? [907]

A. Yes, sir.

Q. Can you tell us where that came from?

A. About the 20th of May, somewhere in there, I had received a check from the title company in Fresno for the sale of my Fresno home in the amount of—and the amount of that check was \$56.59—I am sorry—\$5,659.66, as reported in my income tax return.

I cashed that check or deposited part of it in my personal account on May 28th, 1946, and I deposited \$2,659.66.

I then got from Mr. Seele, I am sure, because he was the only one who handled large bills there, three \$1,000 bills, and I don't know if I bought a cashier's check or whether I used the three \$1,000 bills and made that deposit to my wife's personal account since she had invested part of her money in the Fresno home when we bought it.

Mr. Shelton: Mr. Hagerty, does the record show what year that was? I lost track of it.

A. 1946.

Mr. Hagerty: 1946.

(Testimony of Milton H. Olender.)

Q. May 29, is it?

A. Yes. That was the date I made the deposit in my personal account and it may have been the next day that that deposit was made, either by me or my wife, in her savings account. That is the \$3,000 deposit which is shown in her savings account. [908]

Q. (By Mr. Hagerty): Now there is an annotation on this Exhibit 32 in red pencil to the effect, "This case referred to revenue agent by S. A. Blanchard."

Do you know what that would mean?

A. No, I don't. I haven't the slightest recollection of that particular transaction.

Q. That's the one involving—

A. \$2,500 altogether.

Q. \$2,500. Is Blanchard the name of the first revenue agent—

A. He is the gentleman who was investigating Mr. Goodman.

Q. Mr. Olender, after refreshing your memory there from the books and your checking account and your bank book, can you explain or interpret for us the transactions indicated on U. S. Exhibit No. 31, the two items of \$25,000?

A. Yes. The first one, as I explained before, I had cashed an Army & Navy Store check, received \$100 bills for it, and the next day bought a cashier's check to buy bonds with.

The second \$25,000 is the \$10,000 I deposited in

(Testimony of Milton H. Olender.)

my personal account, and the three \$5,000 trustee accounts I set up for my children.

Q. Calling your attention to defense Exhibit AG in evidence, three deposits slips under date of November 20, 1945, setting up trustee accounts for your children—is that your [909] interpretation?

A. Those are the three I am referring to.

Q. Of that transaction——

A. Yes, I believe so. And my personal bank account shows a \$10,000 deposit on that same day.

Q. Now there are various deposits indicated in your wife's bank book which I believe is in evidence here, Exhibit No.——

A. No, it's the small red book.

Q. Well, referring to your wife's bank book—I don't know just where it is—here it is——

Defense Exhibit T. Is this it?           A. Yes.

Q. Can you explain to us the entries in there with which you are familiar?

A. Well, I have explained the first \$5,000 entry. I also explained the \$3,000 from the sale of the Fresno home. And the last \$2,000 entry was from the sale of the furniture in my Fresno home, which my mother handled and brought the money to me, and I just put it in my wife's account.

Q. Mr. Olender, have you seen the Schedule A, which we, through the accountant, have prepared?

A. I have seen it, but I haven't studied it, Mr. Hagerty.

Q. I see. I just give it to you to refresh your memory with reference to an item in November



(Testimony of Milton H. Olender.)

indicating the purchase of Treasury bonds—two and a quarter per cent Treasury bonds, [910] 1956-62 issue, in the amount of \$5,000.

Do you recall having had such a transaction?

A. Yes, I do.

Q. From what source did those funds come?

A. From the safe deposit box.

Q. The safe deposit box? A. Yes.

Q. Yesterday under cross-examination, Mr. Olender, you told us about the leasing arrangements of the Fresno property, the Olender building in Fresno. A. Yes, I did.

Q. And how the rentals, rent payments were made by the tenants in a divided method; in other words, they prepared checks for you and the other heirs. Is that correct? A. That is correct.

Q. The other owners of the building?

A. Yes.

Q. Are the provisions for such rental payments covered by clauses in the leases that you have executed with those tenants?

A. They are in every lease, yes, sir.

Q. I show you here, Mr. Olender, a lease, and ask you if you can identify it.

A. This is a lease between the members of the partnership—at that time my mother was still alive—and is dated April [911] 23, 1951, and it is made out in the names of Esther Caplan, Martha Olender Hamilton, Mrs. Julius Olender, and Milton Olender, to Robert William Turpin and William R. Turpin. Clause 29—

Mr. Drewes: I will object to any reading from that document, your Honor.

(Testimony of Milton H. Olender.)

A. It is what he asked me.

Mr. Drewes: It is not in evidence.

Mr. Hagerty: This is in support of the direct testimony of the defendant, your Honor. It shows the clause which provides for payment in that divided method on the rentals.

Mr. Drewes: The record doesn't—may I ask that counsel's comments be stricken, and the jury admonished to disregard them?

The Court: Let us see what it is. Let us see if it has any relevancy. You may read it. If it hasn't any relevancy—would you read it, Mr. Olender?

A. Yes, sir. Clause——

Mr. Drewes: It is a 1951 lease, your Honor.

A. I have another one.

The Court: If it hasn't any relevancy, I will strike it, and the Jury ignore it. I can't anticipate what it is.

A. Clause No. 29:

“It is hereby agreed that lessee shall mail or deliver the rentals to the above-mentioned [912] lessors in the following manner:

“Namely one-fourth, \$75, to Esther Caplan, 2167 16th Avenue, San Francisco, California; one-fourth, \$75, to Martha Hamilton, Hotel Travelers, Fresno, California; and one-half, \$150, to Mrs. Julius Olender, Hotel Travelers, Fresno, California (for Mrs. Julius Olender and Milton Olender share.)”

The Court: That merely shows the allocation.

Mr. Hagerty: That was asked of him on cross-

(Testimony of Milton H. Olender.)

examination yesterday, your Honor. This is merely corroborative of his testimony so that we have in effect a leasing arrangement evidenced by that document showing that that was——

Mr. Drewes: The testimony——

Mr. Hagerty: ——the division of the rents.

Mr. Drewes: The testimony elicited yesterday concerned the years 1944, 1945. This document which has now been read from is the 1951 lease. I wish to object on the ground that it is immaterial, irrelevant, incompetent.

The Court: Was the same situation prevalent in the years—in the earlier years?

A. Always. It has always been that way. I can bring an earlier lease, if it is so desired.

The Court: It is substantially the same?

A. Substantially. [913]

Mr. Drewes: That was his testimony of yesterday. I see that there——

The Court: I will provide an opportunity to bring an earlier lease.

A. I will be happy to do that.

The Court: All right.

Q. (By Mr. Hagerty): Yesterday, Mr. Olender——

The Court: In the interval it may be stricken from the record. Bring an earlier lease, if you have one.

Q. (By Mr. Hagerty): Do you have one?

A. I have a lease for the period in question, yes, sir.

(Testimony of Milton H. Olender.)

Q. Mr. Olender, yesterday you outlined upon cross-examination to Mr. Shelton the methods by which you paid the expenses of maintenance of that building down below in Fresno? A. Yes, sir.

Q. I have just shown you a couple of check books.

I should show them to counsel.

(Showing to Government counsel.)

Q. (By Mr. Shelton): If your Honor please, I don't want to be anticipatory in this matter, but I do want to indicate the Government's position.

It appears that these books again are 1951 books, and the recollection of the Government attorneys is that Mr. Olender testified yesterday that his records for the years [914] '44 and '45 were the ones involved and are not now available, and on that basis the Government would respectfully submit it is improper to question on the 1951 checks.

Mr. Hagerty: Well, if your Honor please, this involves an inquiry into this man's course of conduct, and he has testified under oath as to what he did. This is merely corroborative of that, in showing that that same course of conduct still prevails in the administration of this building, and for that purpose I think it becomes then a matter of credibility and the weight to be placed upon the testimony by the jury.

Mr. Shelton: I think, your Honor, the fact that the practice may have been in effect recently does

(Testimony of Milton H. Olender.)

not indicate it was in the earlier period, particularly going back some seven years.

The Court: I think it might be offered as the subject of testimony to correlate the present with the past by testimony.

Mr. Hagerty: Yes, your Honor, and then the witness has testified under oath already that that was his course of conduct at the time in question.

A. Your Honor, I can bring those earlier records. It's just the same thing. I will bring the earlier check books, if I can find them. The same thing was done during the periods under question here. I didn't know that that was [915] necessary. I would have brought them today.

Mr. Hagerty: Well, if he does find the earlier books, can we put them in at that time?

A. I can find them.

Q. (By Mr. Hagerty): However, Mr. Olender, you outlined to Mr. Shelton on cross-examination the exact manner in which you maintained this building, that is, providing for the expense and then separating and dividing the income?

A. That's correct.

Q. Is that true?           A. Yes.

Might I add a little note here, your Honor?

The Court: Yes.

A. I received a check this morning from one of my tenants, and it was unsigned.

Q. (By Mr. Hagerty): Mr. Olender, now you have been under examination for quite a period of time?           A. Yes, sir.



(Testimony of Milton H. Olender.)

Q. And there probably are some things I may not have asked you that I want to ask. But I want to ask you this question. In preparing your income tax returns for the years involved, 1946 and 1945, that are under question in this indictment, did you feel that you had truthfully reported all of your income that you should have reported?

A. When I signed that under oath, I did. [916]

Q. Did you ever have any intent to evade the income tax laws of the United States?

A. I did not.

Mr. Hagerty: No further questions.

Mr. Shelton: Your Honor, may we suggest the usual morning recess?

The Court: Take the recess, with the same admonition, ladies and gentlemen.

(Short recess.) [917]

Mr. Shelton: If your Honor please, the Government has no further questions of Mr. Olender.

Mr. Hagerty: I have just one or two.

### Redirect Examination

By Mr. Hagerty:

Q. Mr. Olender, I show you a part of a sailor's uniform and ask you if you can identify it?

A. I can. That is one of the suits that came in from Seagoing in 1945 at \$18.00.

Q. At \$18?           A. Yes.

Q. Yesterday on cross-examination you were asked certain questions in reference to the quality

(Testimony of Milton H. Olender.)

of the uniforms and the difference in the prices of them?      A. Yes, sir.

Q. Can you tell us about the quality of that uniform?

A. Pardon the use of the word, but this is known as a "lousy gabardine."

Q. What size is that?

A. Size 34. It comes—the pants are not 34—it comes with a 34 blouse.

Q. I show you a blouse. Is this the blouse that goes with it, or is this it (indicating)?

A. No, this is it (indicating).

Mr. Hagerty: At this time, if your Honor please, I would like to offer this in evidence. [918]

The Court: What is the purpose?

Mr. Hagerty: The purpose will be to demonstrate the differences in size and showing the difficulty—I have another which I haven't offered yet—well, I will withdraw the offer at this time and let him identify this.

Q. (By Mr. Hagerty): I show you an additional pair of sailor pants and ask you if you can identify them?      A. Yes, I can.

Q. Will you tell us the quality and size of that?

A. This is serge metcalf, the type most sailors want done.

Q. And what size is it?

A. It comes with a 42.

Q. Do you happen to have this in stock now?

A. This is a piece of current merchandise which

(Testimony of Milton H. Olender.)

I am buying at the present time. I have two size 42's holding in my store.

Q. You have two?           A. Two uniforms.

Q. Two uniforms in your entire stock, is that right?           A. Yes.

Q. Why is that?

A. You don't sell the large sizes very often, as I have stated. Might be an occasional sailor, he is that big. [919] Usually when they are that big they are admirals.

The Court: A little more prosperous when they are admirals?

A. Yes, sir.

Q. (By Mr. Hagerty): This is size 42, is that correct, large size?           A. That is correct.

Q. Now, what are the problems involved in reducing or attempting to reduce or adjust a pair of trousers like this to fit a sailor who would wear a pair of trousers of this size?

A. I wouldn't attempt to fit a sailor to wear that. This would go for a pair 42, 37 or 8. You couldn't go lower than that,—42. You could have the pockets meeting with the one pocket instead of two and that would probably be in the middle of the back. You would also have the problem of cutting down the blouse, which is a very difficult operation.

Q. Is that more difficult than the trousers?

A. It is a much more detailed job, yes. The sleeves have to be shortened——

The Court: You may mark it for the purpose of illustration, Mr. Hagerty.

(Testimony of Milton H. Olender.)

Mr. Hagerty: Thank you, your Honor. I will offer all of them, blouse and trousers, too. [920]

The Court: The size again?

A. The size comes in gabardine, a size 34 blouse and about 28, 29 trousers. The other is a 42 blouse and about a 38 waist.

The Court: Yes?

The Clerk: Defendant's Exhibit A-1 in evidence.

(Thereupon a uniform was marked Defendant's Exhibit A-1 in evidence.)

Q. (By Mr. Hagerty): These uniforms when they are delivered to you arrive in boxed forms but turned inside out, is that right?

A. That is true. The first ones didn't arrive in boxed form. Back in 1944, during the war, there was a box shortage and you got them in cartons, but I have since used cartons which are empty to put in those older suits.

Mr. Hagerty: This is the blouse, the smaller one (handing article to the Clerk), the gabardine trousers. No, I believe this is the one. This looks like the smaller.

The Witness: That is the smaller.

Q. (By Mr. Hagerty): This is the gabardine—this is the Saraga suit? A. No, Seagoing.

Q. Seagoing, rather. And this is the large [921] one.

Mr. Hagerty: I guess I can hold them up so the jury will see the size of the larger one. It is a pretty big man, takes a pretty big man to fill this

(Testimony of Milton H. Olender.)

up. Sec, it is already right on the ground now. And the average sailor is not quite that large, I guess. No further questions.

Mr. Shelton: No further questions on behalf of the Government, your Honor.

Mr. Hagerty: You may step down, Mr. Olender.

(Witness excused.)

Mr. Hagerty: Now, at this time, we will call Mr. Hyman.

ARTHUR HYMAN

called for the defendant, sworn.

The Clerk: Please state your name, your address and your occupation to the Court and to the jury.

A. Arthur Hyman.

Q. Spell your last name.

A. H-y-m-a-n. 51 King Avenue, Piedmont.

The Clerk: What is your occupation?

A. Partner in the Dorfman hat and cap company.

Direct Examination

By Mr. Hagerty:

Q. Mr. Hyman, will you tell the ladies and gentlemen of the jury and his Honor your occupation?

A. My occupation is a partner in the company, Dorfman Hat and Cap Company. I do everything in connection over there to transact business over there. I am a third partner. [922]



(Testimony of Arthur Hyman.)

Q. What is the nature of the business?

A. A wholesale headwear and other small items, rain clothing, similar items.

Q. From time to time do you deal in merchandise like sailors uniforms like these things that are in evidence here, Defendant's Exhibit AJ, in evidence?

A. I did.

Mr. Shelton: If your Honor please, could this question as to the nature of the business be restricted to the period involved here? I think 1944, 1945 and 1946 are the years we are concerned with.

Mr. Hagerty: Yes. I will withdraw any pending question and say this to you, Mr. Hyman:

Q. (By Mr. Hagerty): During the years 1944, 1945, 1946, was your business the same as it is today?

A. In 19—what do you mean by that?

Q. Well, maybe it's a little bit confusing. I will withdraw the question and ask it this way: Were you engaged in the wholesale merchandise business in 1944, 1945?

A. Yes.

Q. 1946?

A. Yes, sir.

Q. Under the same name and firm?

A. Yes, sir. [923]

Q. Your firm name is Dorfman Hat Company?

A. Yes.

Q. At that time did you know the defendant, Milton Olender, who sits there (indicating)?

A. Yes, sir.

Q. And from time to time did you do business with him?

A. Oh, yes.

(Testimony of Arthur Hyman.)

Q. Did you know a girl by the name of Vera Manger?

A. She was my bookkeeper for a number of years.

Q. I see. And did she enter into the employ of the defendant, Mr. Olender, by and with your permission?

A. She would go out of there a short time in the afternoon or when she had her work caught up, maybe, once or twice a week.

Q. Directing your attention to the year 1944, did you ever do any business with a firm or man by the name of Goodman?      A. Yes, sir.

Q. What sort of business did you do with him?

A. I bought from him the sailor ties, sailor suits—that is it.

Q. Sailor suits. Now, did you have any complaint about the quality or size of the sailor goods that you received from him?

A. I bought a lot of goods from him. There was a demand [924] for the merchandise. Still, some of it was so bad that I can recall once we returned quite a very large sum. Could have been 130 or 40 suits, I think.

Q. Did you make complaint to Mr. Goodman about the quality of these goods?

Mr. Shelton: Object to—I object to that, if your Honor please. This is a collateral line of inquiry as to the goods received by this witness and his firm from Goodman. It isn't part of the evidence

(Testimony of Arthur Hyman.)

in this case, and we ask that the former question be stricken.

The Court: What are you leading to, counsel?

Mr. Hagerty: This is what I am leading to your Honor: The whole chief crux of the Government's case is the Goodman transaction with the defendant. We are trying to show by this evidence that the same complaint was true of the goods he received from Goodman as the complaint the defendant had about the goods and suits.

Mr. Shelton: That is objected to.

The Court: This gentleman testifies, as I get it, to inferior merchandise, is that correct?

A. Yes, sir.

The Court: That has nothing to do with size.

Mr. Hagerty: I was leading up to this.

Q. (By Mr. Hagerty): Did you have a complaint about the size you received, Mr. [925] Hyman? A. We did have complaints.

Q. And was there a demand at that time for large size sailor suits or small size sailor suits?

A. The principal demand was for smaller sizes. The sailors going into the service were young men who weighed, I would say, 150 or 60 pounds maximum, and the principal sale was 34, 35, 36, 37, 38 and we sold some 39's and 40's, 42 a few.

Q. But the principal volume was in the smaller sizes?

A. The principal demand was for that size, the smaller sizes that we had.

Q. Mr. Goodman was sending out inferior quality goods and large sizes?

(Testimony of Arthur Hyman.)

Mr. Shelton: Just a minute.

The Court: Sustained. I will sustain it.

Q. (By Mr. Hagerty): You have testified, Mr. Hyman, that you had complaint with the material you received from him?

Mr. Shelton: Objected to, if your Honor please, same line of objection.

Mr. Hagerty: What is the ground?

Mr. Shelton: On the ground that the inferior type of merchandise is outside the scope of the evidence of the case, and I believe his Honor overruled it.

The Court: Yes, that is true. [926]

Mr. Hagerty: All right.

Q. (By Mr. Hagerty): I will direct you to the sizes. You did have complaint about the sizes, is that correct, Mr. Hyman? A. I think so.

Mr. Drewes: We ask that that be stricken, your Honor, as not responsive.

Q. (By Mr. Hagerty): Mr. Hyman, you can't think about it.

The Court: It may go out.

Mr. Hagerty: You have to answer yes or no.

The Witness: Complaints?

Mr. Hagerty: About the sizes?

A. Yes, sir.

Q. (By Mr. Hagerty): You have in connection with the Goodman transactions had investigators at your place checking your books, from the Government, is that right? A. Yes, I have.

Q. Everything you have told us here you have

(Testimony of Arthur Hyman.)

already told to the Government agents, is that true?

A. I think so.

Mr. Hagerty: You may cross-examine. Oh, there is one other question I might ask:

Q. (By Mr. Hagerty): Did you have a problem in dealing with Mr. Goodman on his failure to send invoices with the [927] merchandise and delivery?

The Court: Objection sustained.

Mr. Shelton: Objected to as immaterial.

Mr. Hagerty: That is part of the Government's case against this defendant, your Honor.

The Court: Sustained.

### Cross-Examination

By Mr. Shelton:

Q. Mr. Hyman, I believe it is a fact that you stopped delivery of these sailor suits about June of 1944?

A. Yes, sir; June, 1944; July, 1944; yes, somewhere around there.

Q. Approximately that time? A. Yes.

Q. That means that approximately the latter half of the year 1945 and the year 1946 your concern was not handling the sailor suits?

A. I wasn't in the sailor suit business around then.

Q. So that the testimony that you have given is limited to the first half of the year 1944?

A. That's right. It would be maybe July, August. I doubt if it was August.



(Testimony of Arthur Hyman.)

Mr. Shelton: Will your Honor indulge me a moment?

Q. (By Mr. Shelton): Mr. Hyman, in response to the request of the government special agents yesterday or the day [928] before, you did produce some correspondence from your files, did you not, sir?

A. I gave them quite a lot of papers in the Goodman transaction which showed a number of sailor suits and tie transactions and sailor hats.

Q. And we were looking at some of that correspondence upstairs in the United States Attorney's office this morning, were we not?      A. Yes, sir.

Q. And isn't it true that at that time we saw some correspondence relating to the delivery of larger size, 40's, 42's and 44's?      A. Yes, sir.

Q. Didn't that correspondence indicate that during the first six months of the year 1944 there were being larger sizes shipped out to your concern from Goodman?      A. Yes.

Q. And wasn't there similar supporting testimony and invoices that we looked at up there this morning, that although there were many more of the smaller sizes being shipped, there were larger sizes, 40's, 42's and 44's being shipped to your firm in the first six months of 1944 by Goodman?

(Testimony of Arthur Hyman.)

A. I believe so.

Mr. Shelton: You may examine, Mr. [929] Hagerty.

Q. (By Mr. Hagerty): We have no questions. You may step down, Mr. Hyman.

The Court: Witness excused.

(Witness excused.)

Mr. Lewis: At this time, your Honor, we will recall Mr. Hellman.

The Clerk: Mr. Hellman, please. Repeat your name for the record.

The Witness: Roland Hellman.

#### ROLAND HELLMAN

recalled for the defendant, having been previously sworn, was examined and testified further as follows:

Mr. Lewis: Your Honor, at this time I have again schedules 3, 3A and 4, which is the defendant's computations of net worth.

The Court: Well, that is the revised schedule?

Mr. Lewis: These are the revised schedules.

The Court: I have examined them before, I think.

Mr. Lewis: Yes. The revised parts of the schedule just take up the matter of the Fresno rents, the Olender-Elkus bank accounts, the Olender McGrete bank account, I believe are the changes.

Mr. Shelton: Mr. Lewis, can you speak a little louder? It is difficult to hear you.

(Testimony of Roland Hellman.)

Mr. Lewis: All right. Have you a copy of this schedule, [930] Mr. Hellman?

The Witness: Yes, sir.

Direct Examination

By Mr. Lewis:

Q. Mr. Hellman, you have read all the entire transcript in this case? A. Yes, sir.

Q. You personally went to the Bank of America and examined these deposits of the taxpayer?

A. Yes, sir.

Q. You have gone through the Exhibits in this case? A. Yes, sir.

Q. And these schedules that you have made up are your accounting interpretations of the testimony and the Exhibits of this case, what they show? A. That is correct.

Mr. Lewis: Your Honor, I would like to have these passed out to the jury at this time, and we will take them up again item by item.

The Court: Very well, I suggest you offer them first.

Mr. Lewis: Yes, I will offer them.

The Court: They may be marked.

The Clerk: Defendant's Exhibit 8A in evidence.

(Documents referred to were admitted into evidence as Defendant's Exhibit 8A.)

Mr. Lewis: Will you pass them? [931]

Mr. Shelton: Your Honor, are these to be marked in evidence?

(Testimony of Roland Hellman.)

Mr. Lewis: Yes.

The Court: Yes.

Mr. Drewes: May I ask that they be so marked, subject to motion to strike in the event any part thereof prove not to be supported by evidence?

The Court: With that reservation.

Mr. Shelton: If your Honor please, I believe the Government's were not put in evidence and this is a difference in treatment between the Government's theory——

The Court: Both sides are entitled to have their summaries, if there be supporting testimony. If the Government has not already offered the summary, Mr. Shelton, they may do so.

Mr. Shelton: All right, your Honor. If your Honor please, are they in possession of the Court?

The Court: Are these summaries of yours, Mr. Lewis, identical with the ones we have been discussing?

Mr. Lewis: Yes.

The Court: All right, they may be marked.

The Clerk: United States Exhibit 51 in evidence.

(Whereupon the above-mentioned summaries were admitted in evidence and marked United States Exhibit 51.)

Mr. Lewis (Addressing the jury): These consist of three schedules—schedule 3, 3A and 4. Will you kindly [932] take one of each and pass them around to the members of the jury. (Handing documents to the jury.) Has everybody got the three schedules here?

(Testimony of Roland Hellman.)

I think, your Honor, it would be better to start with schedule four instead of schedule three and 3A, which is a summary. Schedule four is disposition of, deposits of cash in the deposit box.

Q. (By Mr. Lewis): Have you schedule four there? A. Yes, sir, I have, yes.

Q. Referring to the first item, "Cash in safety deposit box May 5 for account Milton Olender and Monroe Friedman."

Mr. Lewis: I think, your Honor, the testimony at page 411 of the transcript supports that.

Q. (By Mr. Lewis): What is that amount?

A. \$75,000.

Q. Take up the next item.

The Court: As to that item, there is a dispute between the Government and the defense counsel?

Mr. Lewis: That is right. That appears in the transcript in three different places. The witness testified five to \$10,000 he took out of the box before he went to Texas, and before——

The Court (Interposing): My purpose is: Although there maybe be some dispute, some disparity or conflict in the record, the Government's position is and the starting [933] position of the Government is \$50,000.

Mr. Lewis: That is right.

The Court: In their summary.

Mr. Lewis: That is right.

The Court: So right at the very threshold you have a disparity of \$25,000 between the Government's position and the defense's position.



(Testimony of Roland Hellman.)

The Witness: Your Honor—

The Court: Just a minute. I just wanted to get that explanatory note to the jury, to discuss the essential differences that we will be confronted with ultimately in the determination of this controversy.

Mr. Lewis: Your Honor, I don't know but what the proper procedure would be to give them the Government's Exhibit at this time and they can make their own comparison as we go along.

The Court: I think the Government is entitled to do it the way they wish. I am not going to try the case for them.

Mr. Shelton: Mr. Lewis started by referring to a page in the transcript.

The Court: That may be omitted.

Mr. Drewes: I think we are entitled to hear from the witness' own lips.

Q. (By Mr. Lewis): Take the second item "Cash brought [934] back from Texas \$7,500." What is the basis?

A. The basis for this is some testimony of Mr. Olender given on the stand here.

Q. Take up the third item under withdrawals: "June 16, transfer personal bank account." What is the basis for that entry?

A. Mr. Olender testified as to his source of funds and made the statement that any funds that were not shown as withdrawn from his business or having been received from the other sources of income—stocks, dividends, or interest—would have come from his safe deposit box. And that is one item

(Testimony of Roland Hellman.)

that was shown as deposited in the personal file as \$100 cash and in the absence of finding it comes from any other source of income, it was taken through this records as cash withdrawn from either the safe deposit box or cash box.

Q. And you found a cash deposit on that date— did you find a cash deposit on that date to his personal bank account?

The Court: Pardon me. It is very difficult to follow a sequence of figures. Can we get these Exhibits at a later time? Does it matter, Mr. Lewis?

Mr. Lewis: I thought if there was any question—

The Court: I suggest the jury retire over the noon recess and you correlate, collect and get together all these [935] Exhibits, because it is disconcerting to follow a number of figures.

Mr. Lewis: Yes.

The Court: No reflection on the clerk. At the same time, the rustling of papers is disconcerting, We will resume at two o'clock, ladies and gentlemen, with the same admonition not to discuss the case or to form or express any opinion until it is finally submitted to you. I have a couple of matters I wish to discuss with you.

(Thereupon, at the hour of 11:40 a.m., the jury retired from the courtroom.)

The Court: The accountant has indicated that perhaps my statement to the jury was not entirely accurate. I merely gave it as an indication that

(Testimony of Roland Hellman.)

might put them on the alert that these statements were not in accord in the essence, that there were wide differences, and this is the illustration.

Mr. Lewis: That is correct.

The Court: I think I was slightly incorrect, perhaps, because your starting point is May, 1944.

The Witness: That is right.

The Court: \$75,000. The Government started with a starting point—

Mr. Lewis: December.

The Court: December. [936]

The Witness: 31st.

The Court: To that extent I was incorrect as to date.

Mr. Lewis: You were correct as to the figure, your Honor, at the end of the year.

The Court: What is your anticipation as to the future of the case, as to witnesses and a possible closing of this suit, and so on?

(Discussion between Court and counsel off the record.)

The Court: Bear in mind this jury is not comprised of C.P.A.s. It represents the laity of the community. None of them have had a course at Hughes Business College. I have suggested to counsel in other cases and reiterate now, start with the premise they know nothing about accounting and try to bring them to your point of visualizing what you have in mind. The defense has its objective, the prosecution its objective. Net worth cases are

(Testimony of Roland Hellman.)

hard cases for juries, in my opinion. I may be wrong. I think I am correct.

Mr. Lewis: They are hard cases for lawyers to prepare, too, your Honor.

The Court: All right, is there anything else, gentlemen? That you have in mind?

Mr. Drewes: Not on the part of the Government.

The Court: Mr. Shelton?

Mr. Shelton: No, your Honor. [937]

The Court: We will resume at two o'clock.

(Whereupon this cause was adjourned until two o'clock p.m. the same day.) [937-A]

Wednesday, October 1st, 1952, 2:15 P. M.

### ROLAND HELLMAN

resumed the stand, and having been previously duly sworn, testified further as follows:

#### Direct Examination

(Resumed)

By Mr. Lewis:

Q. Mr. Hellman, I am showing you the defense Exhibit No. AD, defendant's Exhibit No. AF, defendant's Exhibit No. AG, defendant's Exhibit Z, defendant's Exhibit AB, and defendant's Exhibit AC, and defendant's Exhibit G.

That is just an aid, your Honor, in going through the statement of the disposition of cash in the safe deposit box, Schedule No. 4.

(Testimony of Roland Hellman.)

I think we were down to June 16th, the third item, "Transfer to personal bank account," under "withdrawals," \$100.

What is the basis for that item, Mr. Hellman?

A. The \$100 shown is a withdrawal from cash in safe deposit box as per Exhibit D.

Q. A little louder?

A. Exhibit D indicates a currency deposit in his personal account and his testimony given indicating that any cash other than from these sources—other than from the store or the other sources described would have come from the safe [938] deposit box.

Q. All right. Let's take the next item.

A. The next item is identical, the \$400, we have a deposit slip into the personal account on June 22 of \$400, and the same assumption as far as where the source originated.

Q. Will you speak just a little louder, Mr. Hellman? I have been criticized for not speaking loud enough myself.

Let's take the next item, the June 27th item.

A. June 27th of \$1500 was a deposit to the personal bank account that I verified through the bank on checking the deposit slips of Mr. Olender.

The bank failed to send it over here, but I can testify that I actually saw that original deposit ticket, and it is shown \$1500 cash thereon.

Q. Let us take the next item, July 5th.

A. Addition of \$2500 was from the testimony of Mr. Olender; we have Exhibit 24 which contains the schedule showing that amount also.



(Testimony of Roland Hellman.)

Q. Take the next item, July 17th.

A. \$1500. We have an Exhibit AF showing a deposit on July 17, 1944, \$1500 currency to the account of Olender and Elkus and Mr. Olender testified that the source of that was the safe deposit box.

Q. Take the next item, August 21st, "Transfer to personal bank account." [939]

A. August 24, \$300, is the same as the previous items, cash deposit. We have Exhibit AD, a deposit ticket August 24th, \$300 currency.

Q. Now take the December 15 item of the additions to cash?

A. \$1000 gift from mother. Mr. Olender testified to that gift. It is also contained in the schedule in the Exhibit 24.

Q. Take the next item of December 16, the purchase of United States Treasury bonds, the sum of \$8,000.

A. That was testified to by Mr. Olender and also as per the Exhibit 24.

Q. Take the next item, "Purchase of merchandise for store by cash from Barney," in the sum of \$2160.03. Where do you get that item from?

A. We have Exhibit Z here with these two checks to Barney's totalling that amount and also from testimony of Mr. Olender.

Q. Take the next item, the balance of cash on hand as of December 31st.

A. Balance of cash—

(Testimony of Roland Hellman.)

Q. 1944. How do you arrive at that figure of \$72,039.97?

A. Balance of cash on hand as of December 31st, 1944, is made up of the—it is the total of the original balance of 75,000 plus the additions just enumerated, less the withdrawals. The balance would be—would have been that figure of \$72,039.97. [940]

Q. Now let us proceed to 1945, January the 2nd, "Gift from mother" in the sum of \$3,000. Where do you get that item from?

A. That was from testimony of Mr. Olender and also contained in Exhibit 24.

Q. January the 2nd, 1945, "Cash received from Fresno partnership," \$1,807.46, as an addition to your column. Where do you get that item?

A. That item comes from testimony of Mr. Olender and making the mathematical computation on the tax return as to how much he reported income.

Q. Take the next item, May the 31, "Purchased cashier's checks, Bank of America," the number, deposited it in Army & Navy Store June 20, 1945, in the sum of \$3,000. How do you reach that figure?

A. That item was testified to by Mr. Olender and I also personally verified from the Bank of America that that cashier's check had been purchased.

Q. What about the next item that \$3500 as a withdrawal? How did you arrive at that figure?

A. That is the same explanation. I verified that through the bank and Mr. Olender testified to that amount.

(Testimony of Roland Hellman.)

Q. The next item is another cashier's check in the sum of \$3500 on June the 6th, 1945. How did you verify that figure? [941]

A. In the same manner, through the bank and from Mr. Olender's testimony.

Q. The next item is another cashier's check, deposited the Army & Navy Store account June 20, 1945, in the sum of \$5,000. How did you arrive at that figure?

A. That was verified in the same manner at the Bank of America; also from Mr. Olender's testimony.

Q. The next item June 9th, "Transfer to personal bank account," \$500. How do you arrive at that figure?

A. That is one of the items on the Exhibit AD, June 9, 1945, \$500, currency deposit, and also from Mr. Olender's testimony.

Q. Take the next item August 27th, "Transfer to personal bank account," \$522. How did you arrive at that figure for a withdrawal?

A. Exhibit AD contains a deposit ticket \$522 currency and also from testimony of Mr. Olender.

Q. Take the next item: "November—purchase of United States Treasury bonds \$5,000." How did you arrive at that figure?

A. That was the original testimony of Mr. Olender.

Q. Take the next three items, the transfer to savings account for James Harold Olender, \$5,000—

A. Exhibit—

(Testimony of Roland Hellman.)

Q. —Milton H. Olender, trustee, for Richard Raymond [942] Busby, \$5,000, Milton H. Olender, trustee for Audrey Elaine Olender, \$5,000. How did you arrive at that figure?

A. Exhibit AG includes three deposit tags to those specified names of \$5,000 each on November 20, 1945, and from testimony of Mr. Olender the sources of the cash in the safe deposit box.

Q. Take the next item December 31, balance of cash on hand, \$30,825.43. How do you arrive at that figure?

A. You missed the November 20th item.

Q. November 20th—yes—“Transfer to personal bank account,” \$10,000.

A. The explanation of that is the same. We have a deposit ticket dated December 31st.

Q. Dated November 20th, isn't it?

A. November 20th, excuse me. November 20, 1945, \$10,000, and it is also from testimony by Mr. Olender. The balance on December 31st of \$30,825.43 is computed in the same manner as explained above, starting with the \$72,039.97 balance as of December 31, 1944, adding the additions, subtracting the withdrawals, arrive at a balance of cash as of December 31st, 1945, at \$30,825.43.

Q. Let us proceed down to 1946, January, cash received from Fresno partnership, and addition the sum of \$1725.11. How do you arrive at that figure?

A. From testimony of Mr. Olender and by mathematical computation taken from the tax re-

(Testimony of Roland Hellman.)

turn of Mr. Olender showing [943] the income from the Fresno partnership.

Q. Now let's take the item May 1, 1946, "Transfer to personal bank account" \$6,000.

A. That is contained in Exhibit AD as a deposit, May 1st, 1946, currency deposit of \$6,000, and also from testimony of Mr. Olender.

Q. Take the next item of May 1, "Transfer to Olender-McGrete bank account," \$5,000. How do you arrive at that item of withdrawal?

A. We have Exhibit AB indicating a \$5,000 deposit on May 1st, 1946, and from testimony of Mr. Olender.

Q. Take the next item, May 2, 1946, "Transfer to Olender-Elkus bank account," \$1700. How do you arrive at that figure?

A. We have a deposit ticket dated May 2nd, 1946, indicating a deposit of \$1700 currency, and also from testimony of Mr. Olender.

Q. Take the next item July 10, 1946, "Transfer to personal bank account," \$570.36. How do you arrive at that figure?

A. We have a deposit ticket indicating that much cash deposit on July 10, 1946, in Mr. Olender's personal bank account, and testimony of Mr. Olender.

Q. Take the next figure, September the 18th, "Transfer to Olender-Elkus bank account"——

A. We have a deposit.

Q. ——\$1500. [944]           A. \$2500.

Q. Or \$2500,—you are correct.



(Testimony of Roland Hellman.)

A. We have a deposit ticket dated September 18th, 1946, indicating a deposit of \$2500 currency, and the testimony of Mr. Olender that that came from the deposit box.

Q. Take the following item, September 23, 1946, "Transfer to personal bank account," \$1500. How do you arrive at that withdrawal?

A. We also have a deposit ticket for that September 23, 1946, \$1500 deposit, and from testimony of Mr. Olender.

Q. Take the next item, "September,—down payment on furniture, W. & J. Sloane \$1000."

A. That is based on testimony of Mr. Olender.

Q. Is it also based on the stipulation in this case? A. I believe so.

Q. Take the next item, November 25, 1946, "Transfer to personal bank account," \$6,000.

A. We have a deposit ticket here dated November 25, 1946, \$6,000 currency deposit, and also from testimony of Mr. Olender.

Q. Take the next item December the 4th, 1946, "Transfer to personal bank account," \$2800.

A. We have a deposit ticket dated December 4, 1946, \$2800 currency and from testimony of Mr. Olender.

Q. Take the item December the 20th, "Transfer personal [945] bank account," \$1500.

A. We have a deposit ticket dated December 20, 1946, indicating currency deposit of \$1500 and also from testimony of Mr. Olender.

Q. Take the next item, "Non-deductible expendi-

(Testimony of Roland Hellman.)

tures included in stipulation," \$1340.40. Why do you list that as a withdrawal?

A. Those were cash expenditures which are in the total as per stipulation.

Mr. Shelton: If the Court please, I will move to strike that answer on the ground that the record in this case shows that there are checks which have not been accounted for which could have supplied money for use in paying those non-deductible expenditures; that there is an insufficient foundation laid on the non-deductible expenditures.

The theory of the defense is, as I understand it, that this money must have come out of the box.

Is that your theory?

Mr. Lewis: That is what Mr. Olender testified, if there was not a check in withdrawal from one of the different accounts.

The Court: Overruled.

Q. (By Mr. Lewis): Take the next item, non-deductible expenditures admitted in evidence, I. Magnin & Company, \$863.73, "Gray Shop, \$1391.01, total \$2254.74." [946]

What is the basis for that withdrawal?

A. Those are covered by stipulation as coming from cash, and if they were, as testified, possibly paid by the daughter, then they should not have been added on the Government net worth statement.

Mr. Shelton: If your Honor please, that is a conclusion. The defense effort here is to account for cash. Now, Mr. Olender testified on this stand

(Testimony of Roland Hellman.)

this morning as to his lack of knowledge of those two accounts, and if the defense is to start with a specific—

The Court: I will sustain the objection. It is inference upon inference on that.

Mr. Lewis: Then, your Honor, I might point out that we are accounting for withdrawals and it just reduces our increases of cash on hand. Actually, this is part of the Government's normal proof.

The Court: Well, as I view it, I ruled on it as I saw it, apart from arithmetic aspects.

Mr. Lewis: Yes. Well, that is all right with us.

The Court: If it is to your benefit you should invite the objection.

Mr. Lewis: I do, your Honor.

Q. (By Mr. Lewis): Then, Mr. Hellman, remove from your calculations the \$2,254.74 named in non-deductible expenditures admitted in evidence to I. Magnin and Gray Shop, and with that [947] removal what would be the balance of cash on hand as of December 31st, 1946? A. \$2,639.76.

Q. I will now refer you, Mr. Hellman, to Schedule 3, Milton H. Olender, net worth. Will you tell us how you reached the net worth before—reached the figure net worth per Government computation before the adjustment started?

A. Those figures were merely taken, copied identical from the statement presented by the Government in court here.

Q. And what is the figure of the net worth per

(Testimony of Roland Hellman.)

the Government computation for the year ending December 31, 1944?      A. \$191,002.07.

Q. And for the year 1945?      A. \$260,113.29.

Q. And for the year 1946?      A. \$283,193.62.

Q. Now let's proceed to the adjustments listed under additions to net worth. Cash in safe deposit box, No. 56, Bank of America, main office, Oakland, balance per Schedule 4. Did you reach that by making—transferring the disposition of cash as shown by the Schedule 4 that we just went through with the figure that you show there?

A. Same figure, \$72,039.07.

Q. The Government figure was from the computation sheet that they gave us in this case, was it not? [948]      A. That is correct.

Q. And what did their figures show?

A. \$50,000. That is also indicated above as part of the net worth by the Government.

Q. And for the year 1944, what does your computation show as a difference between your computation and the Government figure?

A. An increase in the cash in safe deposit box for the period at December 31, 1944, of \$22,039.97.

Q. And what is the figure that you reached through your computation from Schedule 4 for the year 1945?

A. The balance of cash per Schedule 4, December 31, 1945, is \$30,825.43.

Q. And what is the Government figure as the basis for their computations?      A. \$7,200.

Q. What is the net increase in your figures over

(Testimony of Roland Hellman.)

the Government figures?       A. \$23,625.43.

Q. Now, taking the year 1946 and excluding the non-deductible expenditures to I. Magnin and Gray Shop in the sum of \$2,254.74, what would be the cash on hand according to your net worth figures?

A. \$2,639.76.

Q. And what did the Government show on their computations? [949]       A. Zero cash.

Q. I think you have there before you the defendant's Exhibit G?       A. Yes.

Q. Will you take that check and explain to the Jury and to his Honor what effect that has on the opening net worth for the year ending December 31, 1944?

A. Exhibit G is a check drawn to M. Olender on the Army-Navy Store as a withdrawal indicated on the books as a withdrawal dated December 23, 1944, in the amount of \$1,000, deposited in Mr. Olender's account on January 10th, 1945, indicating this money had been taken—withdrawn from the store and was on hand as of December 31, 1944.

Q. And that is the basis for your addition of \$1,000?       A. That is correct.

Q. The second addition on the schedule?

A. That is correct.

Q. Now take the next item, amount paid for Goodman sailor suits awaiting disposition not taken into account in store inventory on books per Schedule 1, \$2,550.00. What is the basis of your making that addition to the defendant's opening net worth as of December 31, 1944?



(Testimony of Roland Hellman.)

A. That is based upon evidence of—testimony of Mr. Olender, and also part of the testimony taken from Mr. Saraga's books.

Q. Was it based on Mr. Leavy's [950] testimony?

A. Mr. Leavy's testimony and also on the cashier's checks that were made payable to Goodman for \$20,550.

Q. And as an accounting practice in the light of the testimony here before the Court, do you think that it is proper to include that \$20,550 as an addition to the net worth of the defendant as of December 31, 1944?

Mr. Shelton: Objected to, if your Honor please. I believe the form of the question should be based on Mr. Olender's testimony rather than the testimony before the Court because as I understand it, this witness is stating the defense theory. That is an issue on which there is a conflict in evidence.

The Court: Just revise the question.

Mr. Lewis: Yes, your Honor.

Q. Then do you think, as a matter of accounting practice on the basis of Mr. Olender's explanation of the \$20,550 and the cashier's checks that were purchased according to the testimony in the record in January, 1944, that the \$20,550 should be added to the net worth of this defendant as of December 31, 1944?

A. Based upon the testimony mentioned of Mr. Olender, and also from other testimony, the figure of \$20,550 in the form of merchandise or proceeds,

(Testimony of Roland Hellman.)

I believe the testimony is that it is merchandise, at the end of 1944 that was not already considered as part of his inventory in the store would be an [951] additional asset acquired from cash in January, 1944, which is a period before the date in which—of May 4th when the Schedule 4 commences. Therefore, that would be an additional asset and added to his net worth at December 31st, 1944.

Q. Let us take the next item, the over-statement of accounts payable, \$6,903.02. What is the basis of your assumption that that should be added to the December 31st, 1944, net worth of the defendant?

A. As previously testified to, that item is made up of the Smith transactions and the Barney transactions which were put—which the bookkeeper put on the books and showed them as an accounts payable when in fact Mr. Olender had paid for the merchandise earlier in the year. If he had used cash the accounts payable—the invoices were not owing as of December 31, 1944, and the accounts payable over-stated on the books from which the business investment, net investment in the Army-Navy Store was computed. If the liability is over-stated it would increase the net worth.

Q. Now, referring back to Schedule 4, November and December purchase of merchandise for store by cash, Barney, \$2,160.03—

A. \$2,160.03?

Q. That is right. Now, are these two items inter-related?      A. Yes, they are.

(Testimony of Roland Hellman.)

Q. Will you explain to his Honor and the Jury that relationship and why you have treated it on this Schedule 3 and 4 [952] as you did?

A. As previously testified to, the Barney transaction in December—November and December, 1944, totalling \$2,160.03 were paid for with cashier's checks dated November 9th, 1944, and December 12th, 1944, and as has been testified to the funds came from the safe deposit box which they were paid—and they were paid in 1944. Yet, the books reflect that they were owing as of December 31, 1944. An adjustment was made in February, 1945, correcting that error.

Q. Let us proceed now on Schedule 3, to the next item, the proceeds of the Saraga check dated November 15th, 1945, in possession of Leavy per Schedules 1 and 2, \$7,725.00. Do you mean by Schedules 1 and 2 the schedules on the chart that we previously had before the Jury and the Court?

A. That is correct.

Q. Explaining the Leavy - Saraga - Goodman transaction? A. Yes, that is correct.

Q. Now, why do you include that as an addition to the net worth of the taxpayer for the year ending December 31, 1945?

A. That is included because the amount, \$7,725.00, was, it has been testified to, in possession of Leavy although it belonged to Mr. Olender, and it wasn't an asset at that time, December 31, 1945. The effect in reality, it is part—let's put it this way. Of the item of \$20,550.00 shown at December

(Testimony of Roland Hellman.)

31, 1944, this balance of \$7,725 is what is left [953] of that amount at that point.

Mr. Shelton: Objected to, your Honor. He makes that as a flat statement, not as a construction of any evidence.

The Court: Sustained.

Mr. Shelton: May that go out?

The Court: Yes, it may go out.

Q. (By Mr. Lewis): On what evidence do you base your assumption that the \$7,725.00, the proceeds of the Saraga check dated November 15, 1945, proceeded from the \$20,550.00 and is an addition to the net worth of defendant as of December 31, 1945? Whose evidence?

A. There is testimony that—

Q. Who by?

A. By Mr. Leavy and Mr. Olender.

Mr. Shelton: If your Honor please, I move to strike the reference to Mr. Leavy because I do not believe—I believe the record will show that his testimony did not tie in these particular suits to the ones originally covered by the \$20,550 of cashier's checks.

Mr. Lewis: I think it did, your Honor.

Mr. Hagerty: Most certainly, your Honor.

Mr. Lewis: We have had all of the testimony going through Schedules 1 and 2 twice for the Court, and I think it certainly ties in. I wouldn't want to have to put on that testimony for another afternoon. [954]

(Testimony of Roland Hellman.)

The Court: I think it probably will support those.

Q. (By Mr. Lewis): You may answer the question.

A. Likewise—did you want me to expand further on the relation of that 20,—

Q. Yes.

A. In accordance with the testimony given the \$7,725.00 shown as being on hand at December 31, 1945, is the balance of the \$20,550.00 item shown in 1944 which has the effect of—under the net worth method of computing income, of increasing the net worth at the end of 1944, by the amount of \$20,550 less the \$7725 which is taken in at the end of 1945.

Q. Now let us take up the next item, the total additions to the net worth of the defendant by your computations on December 31, 1944, is how much?

A. Total additions at December 31, 1944, are \$50,492.99.

Q. Will you briefly point out again to the Court and Jury the points which comprise that \$50,492.99?

A. That is the total of the four immediate items above that, the increase of cash of \$22,039.97, the \$1,000 check on hand, the \$20,550 in the Goodman transaction and the \$6,903.02 overstatement of accounts payable making a total of \$50,492.99.

Q. Now, what is the increase in net worth as of December 31, 1945 which results in toto out of the Saraga check over [955] the Government's computation?

A. Saraga check of \$7,725.00 plus the increase



(Testimony of Roland Hellman.)

in cash in safe deposit box of \$23,625.43 makes a total addition of \$31,350.43 at December 31, 1945.

Q. Now, what is the addition to the defendant's net worth over the Government's computation for the year ending December 31, 1946, excluding the non-deductible expenditure item of \$2,254.74?

A. The addition, total addition would be \$2,639.76 which consists entirely of the adjustment to cash in the safe deposit box as of December 31, 1946.

Q. Now let's proceed to the next item, reductions. By that you mean the reductions from net worth as shown by the Government in their computation, do you not? A. That is correct.

Q. And also the reduction as shown by our computation up to this point which is the net worth of the Government at the end of each year and the additions that we have made to that net worth, is that correct? A. Yes.

Q. All right, is there any changes other than those mentioned before constituting the \$50,492.99 as additions to the net worth of the defendant as of December 31, 1944?

A. No, not to my knowledge.

Q. According to your computation what is the net—what [956] was the net worth of the defendant as of December 31, 1944?

A. Based upon the figures here and the addition of \$50,492.99 to the Government's figure of \$191,002.07 makes a total net worth as of December 31, 1944, of \$241,495.06.

(Testimony of Roland Hellman.)

Q. Under the heading of "Reduction,"—"United States Treasury bonds of mother, Mollie Olender, included in the Government computation," what did you do with that item and upon what basis?

A. That item was shown as a reduction to the net worth as per the Government figures, based upon testimony of Mr. Olender as to those bonds belonging to his mother. Therefore, it would be a reduction of the net worth. The reduction of \$20,000 is subtracted from the addition of \$31,350.43, making a net addition for the year of \$11,350.43, which, when added to the Government figure of \$260,113.29, makes a net worth as of December 31, 1945, of \$271,463.72. The same——

Q. Now——

A. It has the same effect at the end of December 31, 1946.

Q. Upon what basis do you say that it has the same effect on the Government's computation of net worth as of December 31, 1946?

A. Inasmuch as this amount of \$20,000 is also included in the figure—in the Government computation of treasury bonds shown above totalling \$57,000 there, \$20,000 of those [957] representing treasury bonds of Mollie Olender would be subtracted from the net worth as of December 31st, 1946.

Mr. Shelton: Your Honor, it is understood that this is still based on his earlier testimony basis.

Q. (By Mr. Lewis): Assuming that that \$20,000 worth of bonds belonged to his mother, as was

(Testimony of Roland Hellman.)

testified to heretofore on the trial by Mr. Olender, what is your figure of the net worth of the defendant as of December 31, 1946?

A. By adding the cash of 263976, subtracting the \$20,000, makes a net reduction in net worth of \$17,360.24, which, when subtracted from the Government figure of \$283,193.62, makes a net worth of \$265,833.38.

The Court: We might take the afternoon recess.

Mr. Lewis: All right.

The Court: Same admonition, ladies and gentlemen.

(Thereupon an adjournment was taken until Thursday, October 2nd, 1952, at ten o'clock a.m.) [958]

October 2nd, 1952, 10:00 A.M.

The Clerk: United States of America vs. Olender on trial.

Mr. Shelton: If your Honor please, we would like to ascertain from the defense if they expect this to be the last witness. We have some witnesses.

Mr. Lewis: Yes, your Honor, this will be our last witness.

Mr. Shelton: One other thing, if your Honor please. Yesterday there was a discussion of this item on Schedule 4 with respect to the I. Magnin and Gray Shop.

The Court: Yes.

Mr. Shelton: In the amount of \$2254.74. Mr.

Lewis has handed us this morning a corrected schedule to correct Mr. Hellman's computation to adjust his 1946 computed income by increasing it by that amount, the \$2254.74, and yesterday Mr. Lewis stated in the argument that this adjustment was to the defendant's advantage, and I think the record should show it is to the Government's advantage.

Mr. Lewis: Your Honor, all I——

The Court: He merely added it from his viewpoint; in terms of addition, he regarded it as to his advantage.

Mr. Lewis: Your Honor, I think I was a little in error on that and I think the item should remain as it is. [959] I will introduce evidence at this point. But I call your attention to the transcript, page 202, where Mr. Whiteside stated:

“We received the checks for 1946 and there were certain checks for 1945 which were brought out and they were not all produced.

“Q. In other words you got all the 1946 checks and some of the 1945 checks?”

“A. And some of the '45.”

#### ROLAND HELLMAN

resumed the stand, and having been previously duly sworn, testified further as follows:

#### Direct Examination (Resumed)

By Mr. Lewis:

Q. Now I am going to show this witness, U. S. Exhibit No. 19, U. S. Exhibit No. 29, and defendant's Exhibit No. AC. (Handing to witness.)

(Testimony of Roland Hellman.)

Have you had an opportunity before the Court to examine those exhibits?

A. Yes, sir.

Q. Will you state to the Court what those exhibits are?

A. Yes, sir.

U. S. Exhibit 19 consists of statements from I. G. Magnin & Company with the letter attached, November 4, 1948, in which are listed the purchases and the payments, credits, [960] to the account running—it covers a period from April, of '46, to October, '48.

U. S. Exhibit 29, although it is not actually—nothing on here saying Gray Shop—it was introduced as an exhibit from the Gray Shop.

Q. Talk a little louder, Mr. Hellman.

A. The ledger account of Mr. M. H. and Betty Olender from the Gray Shop from the period July 2, 1946, until March 7, 1947.

Defendant's Exhibit AC are the ledger accounts of the Bank of America of a personal commercial checking account of Milton H. Olender from the period December 31, 1943, to January 29, 1947.

Q. Are there any withdrawals from that bank account that compare with any of these payments made on either one of those accounts?

A. No, sir, there are not.

Mr. Lewis: Your Honor, I think it is self-evident that if they were paid at all, they were paid in cash, because he did not withdraw it from his bank account, and I think that the non-deductible expenditures admitted in evidence, that \$2554.74,



(Testimony of Roland Hellman.)

should remain on Schedule 4 as it was originally placed there.

Mr. Shelton: If your Honor please, the Government thinks there are at least two reasons why that position is [961] not sound. In the first place, there is a very real difference between payment by cash and payment by check coming out of a safe deposit box. The purported purpose, and I think the admitted purpose of this schedule here, schedule 4, is not to show what was paid in cash but what came out of the defendant's safe deposit box and was used in cash. So that there is an entire difference.

And one thing which could of course have happened, and probably did happen, is that checks were during that time drawn to cash or drawn to cash in an earlier period, which could have been used to make this payment, these payments that did not come out of the box.

The second point is that there are other items of unaccounted for cash receipts of the defendant, such as bond interest and dividends which are not accounted for on this schedule.

And he further testified, Mr. Olender testified yesterday, that he did not pay either one of these bills.

The defense has therefore not established the circumstances, and if they contend that these items came out of the box, the burden is on them to show that the money came from the box.

For that reason we submit your Honor's ruling yesterday was sound.

(Testimony of Roland Hellman.)

The Court: I am inclined to agree with you, Mr. Shelton, [962] on that point. I think it incumbent upon the defense to establish the source, and the inferences may be drawn one way or the other, and they are fairly well drawn one way or the other.

Under the circumstances I think my ruling is correct.

Mr. Lewis: Your Honor, I think that as a matter of fact they should not come in at all because no one stated that the defendant pay them in the first place. It does not appear in the record at any place that the defendant ever paid these bills. The witnesses testified they didn't know who paid them, or whether they were paid by cash or check.

The Court: Well, let us pass that point.

Mr. Lewis: All right.

Then, your Honor, I just handed the clerk a Schedule 3A, which is really the amendment, that will be necessary to get the computations as a result of your Honor's decision, which I would now like to pass to the jury.

The Court: You may. This is amended Schedule 3-A.

(Amended Schedule 3-A passed to the Jury.)

Mr. Lewis: I believe the Jury all have their copies now, and we will proceed, Mr. Hellman, to the net worth according to your computations of the defendant as of December 31, 1945.

A. On Schedule 3-A?

Q. Yes. [963]

(Testimony of Roland Hellman.)

A. Did we mention the changes on Schedule 3 at the end of 1946 to tie in with the new Schedule 3-A?

Q. We took those up in the evidence yesterday, according to the transcript, your Honor.

Your Honor, at the completion of the one in evidence, can we make that change on the face to conform to the record?

The Court: You may.

Q. (By Mr. Lewis): What is your figure for the net worth of the defendant as of December 31, 1945? A. \$271,463.72.

Q. What was the net worth according to your computations at January 1st, 1945?

A. \$241,495.06.

Q. What is the increase in net worth for the year 1945? A. \$29,968.66.

Q. You now add the figure "Non-deductible expenditures" in the sum of \$19,081.32. That is the figure given in the stipulation between counsel in this case, isn't it? A. That's correct.

Q. What was the total income of the defendant for the year 1945?

A. Total income on a net worth basis was \$49,049.98.

Q. Now you deduct "Non-taxable portion of net gain from sales of assets," \$139.77, and that is per the stipulation, is it? [964]

A. That's correct, that is the excess of the capital gain over the amount required to be reported.

Q. Now you also deduct "Non-taxable gifts re-

(Testimony of Roland Hellman.)

ceived: January 2, 1945, Mollie Olender, Mother, \$3,000.”

Why do you deduct that item?

A. That was proceeds received at that date going into the safe deposit box, which does not constitute taxable income, and on a net worth method the gifts are received in the value of the net worth. Therefore the gifts must come out in computing the corrected taxable income on a net worth method.

Q. And on August 24, 1945, you deduct the sum of \$575 as a non-taxable gift from Mrs. Widrin. Why do you do that?

A. That is for the same reason, inasmuch as it is not income, although it is an increase in net worth.

Q. And also the same date, Mrs. Foote, \$2,500. Is that for the same reason?      A. Yes, sir.

Q. Now what is the net taxable income, according to your computations, for the year 1945 of the defendant?

A. Net taxable income based on net worth method is—this is as of December 31, 1945—\$42,835.21.

Q. What did the defendant report—

A. The combined— [965]

Q. —as the net taxable income on his return?

A. The combined taxable income reported per the return of Milton Olender and Betty Olender was \$41,067.61.

Q. And what is the difference between the net taxable income under your net worth computations

(Testimony of Roland Hellman.)

and the net taxable income per the returns?

A. The income computed under the net worth method is \$1767.60 more than was reported on the return.

Q. Now let's go through the items for '46.

Your Honor, I will put these figures on the board when we get through with this witness.

What was the net worth of the defendant as of December 31, 1946?      A. \$265,833.38.

Q. What was the net worth as of January 1st?

A. \$271,463.72.

Q. What is the decrease in the net worth of the defendant for the year 1946?

A. The decrease in net worth is \$5630.34.

Q. And then you add the non-deductible expenditures as shown by the stipulation in the sum of \$23,985.63?      A. That is correct.

Q. And you also add the I. Magnin account not covered by the stipulation as a non-deductible expenditure in the sum of \$863.73? [966]

A. Yes, sir.

Q. And you add the Gray Shop, non-deductible expenditures, in the sum of \$1391.01?

A. That's correct.

Q. Now what is the total income of the defendant for the year 1946?

A. Total income computed on the net worth method for 1946 is \$20,610.03.

Q. Do you deduct from that the non-deductible portion of the net gains from sale of assets in the stipulation of \$464.47?



(Testimony of Roland Hellman.)

A. That's correct. That's the excess of the capital gain over the amount required to be reported by law.

Mr. Lewis: Your Honor, I think it might be advisable for him to explain why they deduct from income when they have a long term capital gain, to the jury.

Q. Why do you make that deduction?

A. As an example, if you sold an asset, a home or any other asset, and had—you realized a thousand dollars profit on it. If the asset had been held over a six month period, the Internal Revenue Law provides that only 50 per cent of the profit is taxable. However, if you received the thousand dollar profit, that would increase your net worth by a thousand dollars, but the tax would only be required to be paid on \$500. Therefore you must reduce the over-all increase in net worth by the amount of income that is not required [967] under the law to be taxed.

Q. What was the net taxable income of the defendant for the year 1946?

A. The net taxable income under the net worth method for the year 1946 was \$20,145.56.

Q. And what was the net taxable income as shown on the defendant's returns?

A. The combined net taxable income reported by Milton Olender and Betty Olender for the year 1946 was \$23,514.62.

Q. What was the net effect of that?

A. The net effect was under the net worth

(Testimony of Roland Hellman.)

method as compared to the regular method of filing on the tax return, the income for 1946 is overstated by \$3,369.06.

Q. What was the total tax liability of the defendant for the year 1945 under your net worth computation?

A. Total tax liability under the net worth method for 1945 \$16,510.83.

Q. What was the reported tax of the defendant on his returns?      A. \$15,495.75.

Q. What was the underpayment of tax for the year 1945 under your net worth computation?

A. The underpayment was \$1015.08.

Q. What was the tax liability of the defendant under you net worth method for the year 1946?

A. \$4417.02. [968]

Q. What was the amount of tax he actually paid?      A. \$5562.79.

Q. What is the difference, what does that result in?

A. It results in an overpayment of tax in the net worth method of \$1145.77.

Q. Now, Mr. Hellman, you have been proven to be an expert in this field. Can you state that the net worth that you prepared is entirely accurate?

Mr. Shelton: Objected to, if your Honor please. It is clear that this is based on evidence that this man did not have first hand. It relates to the evidence in the transcript, the documentary evidence in the case. He has testified as to how he did it

(Testimony of Roland Hellman.)

and what he did with it, and I submit they can't testify positively that it's right.

The Court: From his viewpoint, based upon the record, he may state that it is accurate from an accounting viewpoint and tax-wise.

Is that your statement?

A. No, sir. It is not correct.

The Court: It is not correct?

A. No. No net worth statement is ever correct.

Q. (By Mr. Lewis): What is the distinction between, why you have gone through the record, the transcript, the exhibits in this case——

A. Well, you can tell by Schedule 4, in an attempt to [969] reconstruct an item such as the disposition of cash in the safe deposit box after five or six years have elapsed, and you attempt to go back and reconstruct through evidence, some documentary and some verbal, and attempt to tie in what a man did five or six or seven years ago and to say that his cash position was exactly such, such as this little dispute on the Magnin and the Gray bills, whether that money came from cash in the box or cash on hand, or where it might have come from, there's numerous items like that that arise——

Mr. Shelton: Just a minute. Your Honor, I would object to this recital, on this ground, the net worth method does not ordinarily attempt to reconstruct cash in this very detailed method that this witness has used. The net worth method is ordinarily based on evidence of specific items at specific times.

(Testimony of Roland Hellman.)

Now, the Government does have such evidence in its \$50,000 cash figure, and for this witness in explaining the net worth method to bring in his very unusual adaptation of it——

Mr. Hagerty: If your Honor please,——

Mr. Shelton: Mr. Hagerty, please—I submit it is improper——

Mr. Hagerty: This is an argument before the Jury.

The Court: I think it is argument. The defense has offered in evidence, placed before this Jury, a reconstruction [970] of the cash position. Part of that cash position finds its way or had its emanation in the safety deposit box. This witness has stated the nature of things, that is not an accurate estimate, and it couldn't be. We will accept that statement. We will accept that statement. But that has nothing to do with the net worth theory.

Mr. Shelton: I may——

The Court: As I will instruct the Jury hereafter.

Mr. Lewis: That's right. The reason why I was pursuing this line of questioning was to inform the jury as to the nature of a net worth statement, that naturally we have to go with what documentary evidence we have and the statements of the witness in this case and try to reconstruct a picture where the books were not kept on that revolving fund, and so it is circumstantial——

The Court: You will have an opportunity, Mr.

(Testimony of Roland Hellman.)

Lewis, hereafter to argue the matter at length from your position.

Now the Government contends from their viewpoint that the figures they start with, the cash position of \$50,000, from their position the net worth theory is fairly accurate.

Isn't that your position?

Mr. Shelton: Yes, your Honor. We contend that the answer was not responsive to the question. That a general question about the net worth method does not bring in the type of thing done here by the defense. [971]

The Court: I will instruct the Jury on it.

Mr. Lewis: Your Honor, when I stated we would not have any witnesses, the only witness that we would have would be on these bank exhibits, as to these funds, because I believe they are in error. But the prosecution have put on their witnesses so that won't delay the matter.

Q. I am showing you Government's Exhibit No. 30, No. 31, and defendant's Exhibits AD and AG.

Will you look over the Government's Exhibit?

A. U. S. Exhibit—

Q. —and explain to us how those exhibits were handled by you?

A. U. S. Exhibit 30 is Treasury Department TCR, report of currency transaction that came up yesterday, and U. S. 31 is also currency transaction.

No. 31, under the transaction reported of November 9, 1945, shows amount involved \$25,000, and the bank denotes on its report to the Treasury Depart-



(Testimony of Roland Hellman.)

ment that there were purchased 250 \$100 bills.

And that was handled on the same date, November 9th, 1945—the books of Mr. Olender, his store books, the Army & Navy Store, indicate a withdrawal, and the check indicated being cashed for \$25,000, dated November 9, 1945.

Mr. Shelton: If your Honor please, may the witness state whether the withdrawals shown on the store books—[972] whether that withdrawal is in the same amount, for clarity?

A. Yes. \$25,000. If you will hand me the store book there, I will point it out, Mr. Lewis.

(Counsel hands Exhibit K to the witness.)

A. On the cash paid out journal, Exhibit K, page 58, under date of November 9, a charge to M. Olender, investment account, reducing his investment—charges a drawing, the same effect—and reducing the cash in bank by \$25,000.

The next item appearing on this TCR, Exhibit 31, of November 20, 1945, another \$25,000 item stating—there are also 250 \$100 bills.

Now the explanation given by the bank to the Treasury Department is, “On November 9 cashed a check of \$25,000,” which we just described. Then it states, “On November 20, 1945, deposited \$25,000 to commercial account.”

Now we have evidence here to indicate that “to commercial account” is not entirely correct. The deposit ticket of November 20th, 1945, does indicate a \$10,000 deposit to the personal—commercial account of Milton Olender of November 20, 1945. But the other \$15,000 is evidenced by three deposits of November 20, 1945, of \$5,000 each to the three

(Testimony of Roland Hellman.)

trustee accounts, which we enumerated yesterday, trustee for Audrey Elaine Olender, \$5,000; trustee for Richard Raymond Busby, \$5,000; and trustee for James Harold Olender, \$5,000—those three items of \$5,000 making a total of \$15,000, plus [973] the \$10,000 to his own commercial account, make the \$25,000 deposit of November 20, 1945.

Mr. Shelton: If your Honor please, I would like to inquire whether that deposit slip for \$10,000 is in evidence?      A. Yes, it is.

Mr. Shelton: What is the exhibit number, Mr. Hellman?      A. Exhibit AD.

U. S. Exhibit 30 is another TCR dated December 5, 1945, showing transactions of \$10,000 and \$15,000 on December 5, 1945. The explanation: "Issued cashier's checks for amounts. Paid with entire cash. Purpose: To buy bonds."

Now, the \$10,000 and \$15,000 items stem the \$25,000 cash—stems from the—or showing in the schedule—on this 250—I think I made a misstatement just earlier here. This 250 \$100 bills for which he cashed the store check on November 9, relates to this item of December 5 of the cashier's checks of \$25,000 and the November 20 item of \$25,000 is shown in our Schedule 4 as coming from cash withdrawals from the safe deposit box. On Exhibit 4, under date of November 20, 1945, we indicate the three \$5,000 transfers to the trust accounts, plus the \$25,000 transfer to the personal account. So the November 20 transaction of \$25,000 came out of the safe box, and the November 9 transaction, he bought 250 \$100 bills, and then this other

(Testimony of Roland Hellman.)

one in December 5, which also makes a reference to the November, \$25,000, [974] where they issued the cashier's checks, and then he turned around and used those cashier's checks to purchase bonds with in December, '45—December 5, 1945.

Mr. Shelton: Your Honor, I will move to strike that last answer and say that it is the conclusion of the witness that that same money was involved in those two transactions.

A. I beg your pardon, Mr. Shelton. If you will look at the TCR you will see the bank makes a reference to that. Here they make the reference to the 250 \$100 bills. They say in December, "Issued cashier's checks for amounts. Paid with entire cash. Purpose to buy bonds," and they refer to the same \$25,000 in November that is over here.

Mr. Shelton: So that that actually appears on the TCR, Mr. Hellman? A. That's correct.

Q. (By Mr. Lewis): Will you give me that TCR?

The court: The motion to strike is denied.

Q. (By Mr. Lewis): Will you give me that TCR? I would like to pass these Government exhibits to the Jury, your Honor.

Will you point out to one of the jurors, Mr. Hellman, where it makes that notation on the TCR, so when they look at it later they will not be confused?

(Exhibits passed to the jury.)

Mr. Lewis: While they are doing that, Mr. Hellman, will you put the figures on the board from your testimony? [975]

(Testimony of Roland Hellman.)

(Witness transfers figures to the black-board.)

Mr. Lewis: At this time, your Honor, I would like to have admitted into evidence Schedule 3-A, and also Schedules 1 and 2 of the Goodman transaction on which the witness has also testified to.

The Court: That may be marked.

The Clerk: Schedule 3-A in evidence as part of defendant's Exhibit AK.

(Thereupon Schedule 3-A was received in evidence and marked as part of Defendant's Exhibit AK.)

(Schedules 1 and 2 were received in evidence and marked Defendant's Exhibit AL.)

Q. (By Mr. Lewis): Will you point out to the Jury with the pointer there, Mr. Hellman, just what are the differences between your computations and the Government's?

A. Under our method of computing the net worth of the total net income for 1945 is \$42,825.21.

The Government says it is \$88,052.77.

The reported net income per tax return is the same as the Government Exhibit \$41,067.61.

The same figure \$41,067.61.

The difference our figures indicates in 1945 under net worth method, income was understated by \$1767.60.

The Government says \$46,985.16.

(Testimony of Roland Hellman.)

The total tax under the net worth method for 1945, [976] \$16,510.83.

The Government says it is \$46,582.24.

Per tax return taxpayer reported \$15,495.75, which is the same as the Government figure.

The difference in 1945 under the net worth method results in underpayment of tax of \$1015.08.

The Government says the tax is underpaid by \$31,086.49.

For the year 1946 the net income under the net worth method as computed, \$20,145.56.

The Government says \$48,856.23.

Reported net per tax return, \$23,514.62, which is the same as the Government figures.

The difference resulting in 1946, the income reported per the tax return under the net worth method is income overstated of \$3,369.06.

The Government says the income was understated by \$25,341.61.

The tax under the net worth method is \$4417.02.

The Government says it is \$17,494.82.

Reported tax per tax return is \$5562.79, which is the same as the Government figure, and the difference is, 1946, under the net worth method, for Mr. and Mrs. Olender, overpaid tax by \$1145.77, whereas the Government says they owe \$11,932.03.

Mr. Lewis: No further questions. [977]

Mr. Drewes: If your Honor please, the Government has under subpoena two witnesses, the bank employees from Fresno, who are now in the witness room. One of them unfortunately has been



taken ill. He has the flu, as of this morning, and he would like to testify and be discharged, if there is no objection.

Mr. Lewis: No objection.

The Court: Withdraw this witness then.

(Witness excused.)

R. L. McNAB

called on behalf of the Government, sworn.

The Clerk: Please state your name, your address and your occupation to the Court and to the Jury.

A. R. L. McNab, 3312 Brown, Fresno, I am with the Bank of America in Fresno.

Q. Your occupation again?

A. Pro-assistant cashier, Bank of America, Fresno, California.

Direct Examination

By Mr. Drewes:

Q. As you stated, Mr. McNab, you are employed by the Bank of America in Fresno?

A. Yes, sir.

Q. And as such you have access to the records of that branch bank? [978]

A. Yes, sir.

Q. In response to a subpoena which has been served upon you, Mr. McNab, have you brought with you from the Bank of America savings account records for account No. 3942, in the names of Mrs. J. or Mollie Olender, for the years 1942 to 1945?

A. Yes, sir.

(Testimony of R. L. McNab.)

Q. Have you also brought with you the bank records pertaining to account 2146 in the name of Mrs. J. Olender for the year 1942?

A. Yes, sir.

Q. Have you also with you savings account No. 126 in the name of Terrys Olender Gambor for the years 1942 through 1946.

A. Yes, sir.

Q. Have you further with you all the ledger sheets and deposit tags for the commercial account of Mrs. Mollie Olender for the years 1943 through 1946?

A. Yes, sir.

Q. May I see them, please?

A. (Witness producing.)

Q. Are these in any particular order?

A. Yes, sir, they are from the 1st on through.

(Handing to counsel.)

Mr. Drewes: Will you keep these in order, Mr. Lewis? [979]

Mr. Lewis: I will try to.

Mr. Hagerty: Your Honor, may this be a good time to take the recess while we examine these records?

The Court: We will take the morning recess, ladies and gentlemen. The same admonition.

(Short recess taken.)

Q. (By Mr. Drewes): Do you have the records which you have identified, Mr. McNab?

A. Yes, sir.

(Testimony of R. L. McNab.)

Q. Were those records kept by the bank in the regular course of business?      A. Yes, sir.

Q. And do you have with you photostatic copies of those records?      A. Yes, I do.

Mr. Drewes: It is stipulated that photostatic copies may be substituted for the originals?

Mr. Lewis: Yes.

Q. (By Mr. Drewes): May I have the photostatic copies, Mr. McNab?

A. (Witness producing).

Mr. Drewes: Your Honor, the Government will offer into evidence the original records identified by the witness, substituting therefor by stipulation photostatic copies.

The Court: They may be marked. [980]

The Clerk: As one collective exhibit?

Mr. Drewes: One collective exhibit.

The Clerk: U. S. Exhibit No. 52 in evidence, collective exhibit.

(Bank records, Bank of America, Fresno, were received in evidence and marked U. S. Exhibit No. 52.)

Q. (By Mr. Drewes): Mr. McNab, calling your attention to the records in connection with Account No. 3941 in the name of Mrs. J. Olender, do the records reflect a withdrawal on February 3, 1942, in the amount of \$1,000?      A. Yes, sir.

Q. And is there a withdrawal slip?

A. Yes.

Q. Reflecting that withdrawal?      A. Yes.

(Testimony of R. L. McNab.)

Q. What disposition, if any, do those records reflect in connection with that \$1,000 withdrawal?

A. Well, it shows it went—the records show it went to savings account No. 2146.

Q. And that account is in the name of Mrs. J. Olender?      A. Yes, sir.

Q. And as to the records in connection with account No. 2146, do they show a withdrawal in the similar amount?      A. No, sir.

Q. Again with particular reference to Account No. 3941, do [981] the records show that on March 31, 1943, there was another withdrawal in the amount of \$1,000?      A. Yes, sir.

Q. And do the records which you have before you show the disposition of that withdrawal?

A. That shows it went to the commercial account of Mrs. J. Olender.

Q. Now with respect to the personal account of Mrs. J. Olender, do those records reflect a subsequent withdrawal of that amount?

A. No, sir.

Q. Again in connection with the account No. 3941 which you have identified, do the records show a withdrawal on January 6th, 1944, in the amount of \$2,000?      A. Yes, sir.

Q. And is there a withdrawal slip covering that withdrawal?      A. Yes, sir, there is.

Q. Do the records show the disposition of that withdrawal?

A. The records show it went to savings account No. 126.

(Testimony of R. L. McNab.)

Q. And in whose name is that savings account?

A. Terrys Olender Gambor.

Q. And do the records of that account No. 126 show any withdrawals in similar amount?

A. No, sir.

Q. Again with respect to account No. 3941, do the records [982] reflect the withdrawal on December 15, 1944, in the amount of \$1,000?

A. Yes, sir.

Q. And is there a withdrawal slip supporting that withdrawal?      A. Yes.

Q. Do the records show the disposition of that withdrawal in the amount of \$1,000?

A. The records show it went to the commercial account of Mrs. J. Olender.

Q. And does the commercial account of Mrs. J. Olender show disposition of that \$1,000?

A. Would you repeat that question again, please?

Q. Does the commercial account of Mrs. J. Olender show a withdrawal of the \$1,000?

A. No, sir.

Q. Finally with respect to account No. 3941, do the records show a withdrawal on January 2, 1945, of \$3,000?      A. Yes, sir.

Q. And is there a withdrawal slip reflecting that withdrawal?      A. Yes, sir.

Q. And do your records show the disposition of that \$3,000?

A. The records show it was transferred to the savings account No. 126.



(Testimony of R. L. McNab.)

Q. And with respect to No. 126, that is the account you have identified as being in the name of Terrys Olender Gambor? [983]      A. Yes, sir.

Q. And does that account reflect a withdrawal of \$3,000?      A. No, sir.

Q. With respect, Mr. McNab, to savings account No. 126, in the name of Terrys Olender Gambor, do the records show any withdrawals during the period in question?

A. There is no withdrawals at all, sir.

Q. No withdrawals at all?      A. No.

Mr. Drewes: No further questions.

#### Cross-Examination

By Mr. Hagerty:

Q. Mr. McNab, did you know Mrs. J. Olender, also known as Mollie Olender?

A. No, sir, only by the records, is all.

Q. Only by the records?      A. Yes, sir.

Q. You would not know her handwriting?

A. Only from the records is all, yes, sir.

Q. Do you have her handwriting there in the records?      A. We have signature cards.

Q. I show you two letters here and ask you if you can identify the handwriting of those two letters?

Mr. Drewes: I am going to object until the proper foundation is laid.

The Court: Overruled. [984]

Mr. Hagerty: You may answer.

(Testimony of R. L. McNab.)

Mr. Drewes: May I renew the objection, your Honor—in deference to the Court. Did the witness testify he knew the handwriting?

The Court: He asked him if he could compare them.

Mr. Drewes: Do you know the handwriting?

A. No, sir.

Q. (By Mr. Hagerty): You know the signature of Mrs. J. Olender or Mrs. Mollie Olender from the records in the bank, is that true?

A. Yes sir.

Q. You yourself had no personal knowledge of the woman, no personal acquaintance?

A. No, sir.

Q. And as far as these two specimens of handwriting are concerned, you cannot identify them, is that true?

A. Yes, sir.

Q. You yourself know nothing of these transactions you have testified to other than what you see written on a record, is that true?

A. That is right.

Q. You yourself made none of those entries?

A. No, sir.

Q. So then of course you don't know whether Mrs. Olender carried amounts of cash with her and made payments on days [985] in question that would not be reflected in bank records?

A. Would you repeat that, sir?

Q. I will withdraw it and I will restate it.

You yourself would not know whether Mrs. J. Olender, also known as Mrs. Mollie Olender, carried

(Testimony of R. L. McNab.)

amounts of cash with her or cashier's checks, that she may have entered into transactions in similar amounts on the days that you testified to certain withdrawals being taken from one account and transferred to another

Mr. Drewes: Objected to.

Q. (By Mr. Hagerty): Is that true?

Mr. Drewes: Being improper cross-examination and also immaterial, irrelevant.

Mr. Hagerty: It is the very purpose of the Government witness.

The Court: All right, you may answer.

A. No, sir.

Q. (By Mr. Hagerty): You would not know anything about that, would you? A. No.

Q. The only things you can testify to are simply figures written on records there by somebody other than you, and all you can testify to is that they are the regular bank records kept in the regular course of your bank? A. That's right. [986]

Mr. Hagerty: No further questions.

Mr. Drewes: The witness may be excused.

The Court: The witness is excused.

(Witness excused.)